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The Solicitors' Journal.

LONDON, JANUARY 7, 1871.

THE WRITER OF A LETTER to the *Times* of Monday last, with reference to the seizure of the English vessels by the Prussians, maintains that "the Prussians as holders and occupiers of conquered French territory were justified in converting to their own use the vessels they found there, though the property of the subjects of a neutral state, provided that the exigencies of the war demanded it, and still more if they were prepared to offer compensation for the damage inflicted." Further, he writes that the Prussians "are the judges of the necessity, . . . and this necessity did exist, at least, in the opinion of the Prussians." This conclusion is grounded on the proposition that "the supreme power of a state has a right to use all private property for public purposes, if necessity demands it—even the property of the stranger within its gates. The old text writers on international law recognise this right, which is called Angaria." The authorities quoted are Massé, Phillimore, and a note by Dana to the 8th ed. of Wheaton. Massé does support this view to some extent, but he states the existence of the right of Angaria very cautiously. "L'usage peut avoir autorisé cette pratique," he says; but he carefully explains that the practice is contrary to principle, and is less the exercise of a right than the assertion of a power.

Phillimore, vol. 3 p. 42, says of Angaria that "If the reason of the thing and the paramount principles of national independence be duly considered, it can only be exercised, and perhaps scarcely then justified, by that clear and overwhelming necessity which would compel an individual to sieze his neighbour's horse or weapon to defend his life." Dana (Wheaton, 8th ed., by Dana, p. 152, at p. 373), says that Angaria is a kind of forced loan attempted to be justified only by the necessities of war, and always accompanied by compensation. It is the right that has been claimed to take possession of neutral vessels found in port on the breaking out of the war for "the transportation of troops, munitions of war, or other temporary belligerent purpose." He then notices some authorities in favour of the existence of such a right, and sums up the matter thus:—"The truth seems to be that the violence of early times and occasional acts in modern times under urgent necessity, and some recognition in later treaties, have led commentators to place in the category of rights, in connection with embargo and reprisals, what, in fact, is only an occasional, and not unlikely exercise of power by a belligerent *without right.*"

The authorities cited by the writer of this letter do not support the conclusion he has arrived at, nor is that conclusion supported by other authorities, as, for instance, by Hübner in his "De la saisie des battiments rentres," where the whole question of the seizure of neutral vessels is discussed with unusual clearness. Heffter also (section 150) speaks of the right of Angaria as "ce pretendu droit," and lays down principles quite inconsistent with it, although he admits that the alleged right has, in fact, been exercised as well as claimed. Not only is modern authority against this so-called right of necessity, but it is clearly contrary to well-established principles of international law. But more than this, even if necessity or extreme urgency could give the right claimed, no such state of circumstances existed in the case of the seizure of the English vessels. It was, no doubt, convenient for the Prussians to use the vessels, as an obstruction to the navigation of the river, but there was no necessity to stop the navigation at all unless necessity and convenience are to receive the same meaning. It will also be remembered that the Prussians have gone beyond the alleged right of Angaria, which is said to authorise a forced *loan* of neutral vessels. The English vessels are destroyed, and the payment tendered is said to have been "requisition bonds" on the town of Rouen; a payment very little better than no payment at all. Even if the full value of the vessels, however, had been paid, this would not justify that which had been done in the words of Mr. Dana "without right," although it may materially affect the view which would be taken of the breach of law.

The fact is, that necessity does not justify as a general principle, either in municipal or international law, that which without necessity would be unlawful. No necessity is stronger than that created by starvation, but a starving man is not allowed to take a loaf of bread from its owner even to save his own life. The fact that the loaf was taken for this purpose will render the case proper for the infliction of only the minimum of punishments or perhaps for pardon, but the law is nevertheless broken. The same principle holds good in international law, subject to those limitations which we noticed last week in discussing this subject.

AN IMPORTANT POINT has lately come before Vice-Chancellor Wickens in the Lancaster Chancery Court, upon a topic which has several times during the past year been before the Chancery Courts at Lincoln's-inn—the borrowing capacity of a benefit building society. The subject now presented itself in an entirely new form, raising for the first time the question as to the validity of a benefit building society "amalgamation."

In *Laing* v. *Reed* (18 W. R. 76), the question as to this borrowing capacity was for the first time brought to a decision, and it was held by the Court of Appeal in Chancery that an unlimited power of borrowing would be beyond the scope of a building society's objects, and that a rule authorising borrowing without limit would consequently be *ultra vires*. But since a power of borrowing to a limited extent might be directly conducive to the legitimate objects of a building society, by enabling the society to grant advances to its members without realising its own invested funds at a moment when realisation might be possible only on disadvantageous terms, the Court held that a rule empowering the society to borrow to the extent of two-thirds of the amount for the time being advanced by itself on mortgage was perfectly legal. It appeared from the report of the subsequent case of *Re Victoria Permanent Building, Investment, and Freehold Land Society* (18 W. R. 967), that in 1857 Lord Westbury (then Attorney-General) had advised the late Mr. J. Tidd Pratt, the barrister appointed to certify the rules of such societies, generally that borrowing powers were illegal: probably Sir Richard Bethell's attention was not called to the contingency of a limited power designed for the purpose mentioned in *Laing* v. *Reed*. But, though such a limited power is legal, it is certain that an unlimited power intended to enable the society to carry on a banking business by taking in deposits at interest, would be *ultra vires*. "If the rule enabled the trustees to raise an unlimited supply of money without any reference to the contributions of the members, it would be clearly *ultra vires*" (Lord Hatherley in *Laing* v. *Reed*). Again, in *Re National Permanent Benefit Building Society*,

Ex parte Williamson (18 W. R. 388), it was held by the Court of Appeal in Chancery that where the rules are silent as to borrowing, borrowing is illegal, and money actually borrowed creates no legal debt. True that, upon the principle acted on in the *German Mining Company's case* (2 W. R. 543, 4 D. M. & G. 19), and the *Cork and Youghal Railway Company's case* (18 W. R. 26), if the money so advanced has been expended by the society in the discharge of debts for which the society was legally liable, the lenders will be allowed an equitable debt against the society, as standing in the shoes of the creditors so paid off; but it is for them to show that their money was so applied, and in the case last mentioned, no proof of any such application being adduced, and there being nothing to show that the borrowed moneys had been applied otherwise than in making advances to the members of the society in the way of its objects, the Court disallowed the claims of the lenders and discharged a winding-up order obtained by them as creditors. There was a third case before Vice-Chancellor Malins, that of the *Victoria Permanent Benefit Building Society* (*ubi sup.*), which, however, adds nothing to the other two. In that case an attempt was made in the rules of the society to provide for the existence of a class of depositing members, who should merely deposit money with the society at interest, as people do with their bankers occasionally. The Vice-Chancellor very properly treated these deposits as creating no debt against the society, subject, of course, to any question of the deposits having been applied as in the *German Mining Company's case*.

In the *Liverpool and District Permanent Benefit Building Society's case*, in the Lancashire Chancery Court, which we report in another column, it was desired to reduce the amount of a society's shares from £100 to £10, and it was imagined that this could be done by forming a new society in £10 shares, which should take to the assets and liabilities of the old one. The Vice-Chancellor regarded such a transaction as a species of borrowing which was decidedly *ultra vires* a building society, and no doubt it was *ultra vires*.

The old society had a rule empowering the managers to borrow, if they "should deem it advantageous to the society to obtain advances from their bankers or other persons for the purposes of the society." The Vice-Chancellor considered that this was invalid, as being an unlimited power. We are not clear that a rule would be invalid which should simply authorise the managers to take advances "for the purposes of the society;" it might certainly be contended that the latter words restricted the power to the legal limits. In the present case the said society had borrowed £300 under their borrowing rule, and the new society regularly continued to pay the interest down to the date of its own winding up. The new society had no borrowing rule; but, as the old society's rule was illegal, the two were on a par as to borrowing power. The Vice-Chancellor observed that, as the borrowing was illegal, acquiescence could not make it legal. The official liquidator admitted assets sufficient to pay the claim of the lender; but, in the absence of any proof that the £300 had been spent in paying any debt for which the society was legally liable, the existence of assets would make no difference. The principle of the *German Mining Company's case* (*ubi sup.*) seems to have been frequently misunderstood. The Court allows an equitable claim, not because the company has had the money and possesses assets, that is not enough; the equitable claim is allowed only on proof that the money was spent in discharging a legal liability. This is explained very clearly in the *Cork and Youghal Company's case* (*ubi sup.*), in which the Court of Appeal reversed Vice-Chancellor Malins, whose decision in the *Victoria Society's case* (*ubi sup.*) contains some erroneous remarks on this point. It must in any case be very difficult for a lender to prove such an application of his money as would save his claim, and in the case of these societies it will almost always happen that the money has been applied to the society's legitimate business of lending to its members, for which very reason the claim will fail, though a rule restricted to that legitimate business would have been legal.

IT WAS MADE PUBLIC last November that Mr. Ayrton, having devoted several months to reposing after the arduous labour of announcing that he was ready to begin, had at last arisen, rubbed his eyes, and issued tenders for laying the foundations of the New Law Courts on the vacant site which has been left alone ever since Mr. Ayrton got the foundation money last summer. So that people began to hope that now at last the work would go forward. But this was premature. The time for tenders expired with the year 1870, and it seems that Mr. Ayrton's terms offered to contractors have been such that not a single contract has been sent in. The contractors say that the terms offered by the First Commissioner of Works are so inequitable that they one and all decline tendering, and they state, moreover, that he insists on conditions which were condemned as harsh and unjust in the recent case of *Jones v. St. John's College, Oxford*. It may be that Mr. Ayrton is being made the victim of machinations, and it may be that he takes a savage pleasure in doing what lies in his power to continue the blundering, delay and general mess in which the Government have always kept the New Law Courts business hitherto. The only thing of which we feel able to speak with certainty is more delay.

IN THE THIRD NUMBER of the *Revue de Droit International* for 1870 there is an article on the *Alabama* claims entitled:—"Opinion impartiale sur la question de l'Alabama et sur la maniere de la résoudre." The author is Professor Bluntschli who possesses a double qualification for the discussion of this subject, as he is a jurist of great reputation, and as a German is likely to be less partial than an Englishman or an American.

The article first examines the question of the recognition of the Southern Confederacy as belligerents. Rebels, our author says, become belligerents when "une partie intégrante de la population d'un état (*a*) est de fait organisée comme force militaire (*b*) observe dans la conduite des hostilités les lois de la guerre et (*c*) croit de bonne foi lutter an lieu et place de l'état pour la defense de son droit public." On applying these principles to the facts of the American Civil War, Professor Bluntschli concludes that the recognition by England and other countries of the Southern Confederacy as belligerents was justified by the law of nations and can give the United States no just ground of complaint.

The second part of the article deals with the *Alabama* claims strictly so-called—*i.e.*, with the questions arising in consequence of the captures made by the *Alabama* and other similar vessels. The facts assumed for the purpose of the discussion are chiefly taken from Mr. Sumner's well-known speech in 1869 on this subject. The facts respecting the *Alabama* are stated with substantial accuracy, except that it seems to be implied (although not stated directly) that she left English waters armed. This, of course, is not the fact, as her armament was put on board at the Azores. The conclusion arrived at is that this country was guilty of a breach of international duty towards the United States in allowing the *Alabama* to depart. Four different modes are mentioned in which reparation might be made to the United States—(1) cession of territory; (2) payment of money; (3) acknowledgment that England has been guilty of a breach of duty; (4) fresh declaration of the principles of international law on this point. Professor Bluntschli decides that a combination of the second and fourth would be the true solution of the difficulty. Combination of these four "modes" as alternatives involves some confusion. Liability having been determined, and the measure of damages settled, all that remains is to work out the sum as to amount; the remainder is merely a question as to the coin in which payment is to be made.

So much for the first two. As to the third, an acknowledgment of having committed a breach of duty would be necessarily implied by the making of payment. The fourth is an utterly distinct matter. A fresh declaration of the international law on the point may be very expedient, but it can have nothing to do with reparation for any past departure from international law or usage. The complaints of the United States respecting the recognition of the Confederates as belligerents are so absurd in themselves, so contrary to the principles laid down by their own writers and statesmen, and so opposed to the theory on which the American Government has acted on similar occasions, that probably they will not be again seriously urged now that the irritation of the civil war is past. We have already more than once expressed an opinion on the subject, which is identical with that of Professor Bluntschli. We gather, however, from some ambiguous sentences that Professor Bluntschli, while conceding the *right* to acknowledge the belligerency of the South, thinks that the recognition was, in fact, unnecessarily precipitate. In this, we do not agree with him, but it is a political and not a legal question. The definition of belligerency given in the article requires, in the case of a rebellion, that the insurgent population "croit *de bonne foi* lutter," &c. In the application of the definition to the American Civil War, the fact that the Confederates had "bonne foi au sujet de leur prétendu droit politique" is discussed as a material element in deciding the question of belligerency. The precise meaning of these words, "bonne foi," when employed in this way, is not very clear, but apparently they must imply an examination of the motives or intentions of insurgents in considering whether they are belligerents. This seems to us a most mistaken idea. Belligerency is a pure question of fact. It depends upon physical results and upon the material position of the parties. The conception of belligerency has nothing whatever to do with a metaphysical inquiry into motives. To inquire into the motives of insurgents would be to go back to the old and exploded theory that the rules and duties with regard to just and unjust wars are not the same.

The first thing that strikes us, in the part of the article on the *Alabama*, is the absence of all mention of the circumstances of the departure of any ship except the *Alabama* herself. The Southern cruisers are generally spoken of in the plural, but only once is the name of any one of them except the *Alabama* mentioned. In that place all the cruisers are spoken of as if giving rise to the same questions, and the vessel named is the *Florida*, which it will be remembered sailed unarmed from an English port, was seized at the Bahamas, and released for want of evidence, and then, still unarmed, broke the blockade at Mobile, there armed and broke the blockade again, and then first commenced to destroy American ships. To treat the questions arising from the acts of the *Alabama* and the *Florida* as the same is obviously incorrect. Subject to this question, the views enunciated by Professor Bluntschli are those that have already found favour in England. He proposes that England should pay for the losses occasioned by the captures of the *Alabama*, and should re-affirm the principles of international law on this point. The latter question is already settled, so far as it can be settled by municipal law, by the Foreign Enlistment Act of last session (33 & 34 Vict. c. 90), by which England has taken upon herself the most stringent obligations, some of which are admittedly in excess of what was required by the strict rules of international law. As to the payment of money, everyone is ready to pay if it is shown that this country is liable for the escape of the *Alabama*, or of any of the cruisers; and the Government have already consented, by the convention made with Mr. Reverdy Johnson, to refer this question of liability to arbitration. We believe that most Englishmen who have studied this question with care are of opinion that great negligence was shown in the case of the *Alabama*, and that therefore England is liable for the damage she caused to American shipowners. This, however, is a very different thing from admitting that England is liable for the captures by other Southern cruisers. The article touches on some other points, which we have not space to notice at length. The author thinks that no private claim can be maintained by the American shipowners against England, but that their only remedy is through the diplomatic action of the United States. The measure of damages adopted is the reasonable one of the value of the vessels and cargoes destroyed.

On the whole this article is moderate and impartial, but it adds nothing new to the question and is altogether of less interest than might have been expected from its author's reputation. The disquisition on the *lex aquilia* and on "omission" and "commission" is very weak. The editors have printed as an appendix to the article a letter from Professor Lieber, of New York, to Mr. Seward, which was written in 1865. The pith of the letter is that international disputes should be referred to a faculty of law such as that of Heidelberg and of Berlin.

OUR CONTEMPORARY THE *Freeman*, whilst concurring in the view recently given in this journal (*ante* p. 111) of the law excluding Nonconformist ministers from church pulpits, suggests that the clergy who desire to show their good will to their Dissenting brethren should be invited to preach in the pulpits of Dissenting chapels. But they could not accept the invitation without some risk. They cannot, apart from the provisions of the recent Clerical Disabilities Act, shake off the authority of the bishop or the jurisdiction of the ecclesiastical court. They cannot be at the same time English clergymen and Dissenting ministers. Some years ago poor Mr. Shore tried the experiment but failed in his attempt (*Barnes* v. *Shore*, 3 Q. B. 640). Probably in practice, few prelates would choose to interfere with a clergyman who wished to preach in a Congregationalist or Baptist chapel. But there is no doubt that he could be inhibited, and, if he neglected the inhibition, could be punished as the Ecclesiastical Court might direct. To preach a sermon in an unconsecrated chapel, where all strangers who choose have access, is a *public officiating* by the preacher of which the bishop can, if he pleases, take cognisance (*Trebec* v. *Keith*, 2 Atk. 498; *Freeland* v. *Neale*, 6 Notes of Cases, 252).

Again, the consent of the incumbent of the parish in which the preaching takes place is required, and to act without his consent would be an ecclesiastical offence. "It is a general rule of law," says Abbot, C.J., in *Farnworth* v. *Bishop of Chester* (4 B. & C. 568), "that no person can be authorised to preach publicly in a chapel to which all the inhabitants of a district have a right to resort without the consent of the clergyman to whom the cure of souls is given." Some of our readers may remember that in 1857 the incumbent of St. Michael's, Strand, acting on this rule, asserted his right to prevent a brother clergyman from officiating at some special services at Exeter-hall; and there can be little doubt that, in taking that course, he was acting strictly within his legal rights. Any clergyman, therefore, who should accept an invitation to preach in a Dissenting chapel, will have to encounter the double possibility of censure from his diocesan, and of proceedings at the instance of the incumbent in whose parish he preaches.

THE ST. ALBANS CLERGY AND PRAYERS FOR THE DEAD.

Is it lawful in the Church of England to pray for the dead? This is a question which the recent resolution of the Gloucester branch of the English Church Union and the actual practice of the St. Albans clergy may soon invest with considerable importance. From the pulpit of St. Albans the congregation are every Sunday morning exhorted to pray for the souls of those who have fallen in the present war, and there can be no doubt that amongst the Ritualistic party generally there is a growing conviction that "it is a holy and wholesome thought" to pray for the dead.

The point has already been the subject of judicial decision in the Court of Arches (see *Breeks* v. *Woolfrey* Brod. & Freem. 354). In 1838 Mrs. Woolfrey, a Roman Catholic, erected a tombstone in Carisbrooke churchyard, in the Isle of Wight, to her husband, bearing the following inscription:—"Spes mea Christus. Pray for the soul of J. Woolfrey." The vicar, Mr. Breeks, thereupon articled her, declaring that the inscription was contrary to the 22nd Article of Religion, and to the general doctrine of the Church. The case was argued at length before Sir H. Jenner Fust, the Dean of Arches, and his opinion was that "the authorities seemed to go no further than this—to show that the Church discouraged prayers for the dead, but did not prohibit them," and that "the 22nd Article was not violated by the use of such prayers." That article is as follows:—"The Romish doctrine concerning purgatory, pardons, &c. . . . is a fond thing vainly invented and grounded on no warranty of Scripture, but rather repugnant to the word of God," and the judge seems to have thought that the point on which the whole question turned was whether praying for the dead is so necessarily connected with the doctrine of purgatory as to form a part of it. He decided, and no doubt rightly, that the two things do not exactly connote each other. The usage of offering prayer for the dead is in fact, historically, entirely independent of and apart from the notion of purgatory. But although this be so, we think it far from clear that Sir H. Jenner Fust's further ruling that to pray for the dead is not contrary to the doctrine of the Church of England is sound. The practice does not contravene the 22nd Article, but is it consistent with the general law? It is very difficult to form a correct conclusion on the subject, but it at least appears certain that *Breeks* v. *Woolfrey* is not an authority for such a practice as that existing at St. Albans. It may possibly be that it may be lawful for a layman to erect a tombstone in a churchyard with an inscription asking the reader to pray for the soul of the departed. But it is a very different thing for a clergyman *during the service of the church* to address a similar request to his congregation.

"In the performance of the services, rites, and ceremonies ordered by the Prayer-book, the directions contained in it must be strictly observed; no omission and *no addition* can be permitted." Such was the language of the Privy Council in *Westerton* v. *Liddell* (Moore's Rep. p. 187), and it was adhered to and affirmed in *Martin* v. *Mackonochie* (L. R. 2 P. C. 365, 17 W. R. 387). Is a recommendation delivered during divine service to use a form of devotion "discouraged" by the church an unlawful addition to the prescribed "order and form?" Possibly not, if the law of the church merely *discourages* the practice. It is, however, capable of being argued that, on the true construction of the rubrics and Articles, prayers for the dead are not only discouraged, but by necessary implication actually prohibited. In the first Prayer-book of Edward 6 they are positively enjoined as "a pious and proper work," and forms of such prayers are retained. In the second Prayer-book of Edward 6 the injunction to use them was expunged, together with the forms previously prescribed. But they are not *expressly* prohibited, and the present Prayer-book is also silent on their legality. We have, therefore, to consider the effect of an *omission* of a direction in our present Prayer-book given originally in express terms. Is the omission of an injunction equivalent to the *prohibition* of the thing enjoined? This was the question so largely discussed in *Martin* v. *Mackonochie*, especially in the Arches Court (16 W. R. 604), with reference to the mixing of water with the wine at the Communion, which is prescribed by the first Prayer-book, but not in the second, nor in the present book. The Dean of Arches decided that the mixing was illegal if done during the service. "My decision," he says, "is that the mixing may not take place during the service, because such mixing would be a ceremony designedly omitted in and *therefore prohibited by* the rubrics of the present Prayer-book;" and the language of the Privy Council in the same case as to the ornament rubric (L. R. 2 P. C. App. 391) appears to give colour to the proposition that the designed omission of an injunction is equivalent to the absolute prohibition of what was enjoined by it.

In the result the legality of prayers for the dead, or rather of requests to use them made during divine service, certainly seems to us more than doubtful. The case of *Breeks* v. *Woolfrey*, on which, we presume, the Ritualists rely, is, as we have shown, no authority for the course they are pursuing. With the actual decision in that case we are disposed to agree, but the more recent cases of *Westerton* v. *Liddell* and *Martin* v. *Mackonochie* have thrown considerable doubt on the soundness of many of the *dicta* contained in the Dean of Arches' judgment. The tendency of recent decisions in the Privy Council has been to restrict the clergy rigidly within the four corners of the Prayer-book and other written law of the church.

ON THE PROPER SUBJECT-MATTER FOR A PATENT.

It has been doubted by many people in England, as well as in America, whether the patent law ought not to be abolished. Whether this is expedient or not we do no pretend to determine; but at all events it will be admitted that it is of the utmost importance to the public that letters patent should only be granted under proper restrictions, and that trade should not be hampered by patents taken out for things which are not properly the subject-matter of patents. Letters patent are granted almost as a matter of course, upon payment of the usual fees, and the task of demonstrating that the Crown was deceived, and that the patent ought not to have been granted, is left to whomsoever it may concern. This seems hardly fair to the public. Persons about to bring out what they think is a new article, rush away to the patent-office and obtain protection, partly because they know that the ignorant imagine every patented article must be good of its kind, because it *is* patented, and partly because they rely on the expense and uncertainty of the law to deter even their rivals in trade from infringing the privilege thus obtained.

The Statute of Monopolies (21 Jac. 1, c. 3) after enacting that all monopolies, &c., shall be void, save letters patent and grants of privilege for the term of fourteen years and under, of the sole working or making of any manner of new manufactures within this realm to the true and first inventor, which others at the time of making such letters patent shall not use, so as also they be not contrary to the law, or mischievous to the State by raising prices of commodities at home, or hurt of trade, or generally inconvenient. This law is in full force at the present day. Concisely speaking, the characteristics of a valid patent are novelty and utility, and in a suit for infringement the onus of establishing this lies on the patentee. To be the proper subject-matter of a patent the invention must be both new and useful, or at all events generally useful, though it may not answer in all cases (*Haworth* v. *Hardcastle*, 1 Bing. N. C. 182), for an altogether useless invention may well be considered mischievous to the State, to the hurt of trade, and generally inconvenient, in the words of the statute (*Morgan* v. *Seaward*, 2 M. & W. 562). The misfortune is that under the present system of promiscuous granting of patents the monopoly of so many so-called inventions continues secured to the owner, not because they are the proper subject-matter for patents, but because the owner is astute enough or wealthy enough to deter or buy off opposition.

The term manufacture used in the Statute of Monopolies applies not only to anything made by human skill, but also to the method or process of making the thing, as distinguished from the thing made. The term may mean the machine, &c., when completed, or the mode of

constructing the machine, &c. (*Morgan* v. *Seaward*, *sup.*). But the discovery of a principle or new property in matter, though it may form a valuable addition to the sum of human knowledge, is not within the policy of the patent law (Kerr on Injunctions, p. 410); though a patent may be taken out for a principle, coupled with the mode of carrying into effect that principle (*Neilson* v. *Harford*, 8 M. & W. 806). No mere philosophical abstract principle, however, can answer to the word manufacture. Something of a corporeal and substantial nature, something that can be made by man from the matters subjected to his art and skill, is requisite to satisfy this word (per Lord Tenterden, C.J., *Rex* v. *Wheeler*, 2 B. & Ald. 350).

This two-fold use of the word manufacture it will be convenient to bear in mind. In order to be the proper subject for a patent the manufacture must not only be "for the good of the realm," *i.e.*, generally useful, but also "new," *i.e.*, really novel—that is, involving some display of skill and ingenuity on the part of the inventor. The criterion (according to Lord Campbell) is, that in order to make a patent valid for the application of an old invention to a new purpose, there must be some novelty in the application (*Brook* v. *Aston*, 6 W. R. 42, 6 El. & Bl. 485). This appears to express concisely enough the true meaning of the Statute of Monopolies. It was, indeed, suggested by Lord Chelmsford, in *Penn* v. *Bibby* (15 W. R. 208, L. R. 2 Ch. 127), that there must be some inaccuracy in the report, since, whenever an invention is applied to a new purpose there is necessarily novelty in the combination or application. With deference to Lord Chelmsford's suggestion, we venture to infer from the context of Lord Campbell's remarks that the novelty meant is something more than the bare novelty which consists in the application of an old invention to an analogous subject. As Lord Abinger said in *Losh* v. *Hague* (Webs. 202), when all mankind had been used to eat soup with a spoon, no patent could be taken out by the man who first said you might eat peas with a spoon. Nor would the Chinaman, in Charles Lamb's well-known story, who discovered that pigs could be roasted without burning down a house for the purpose, as his predecessors for generations had done, be entitled under our patent law to a patent for his discovery. To support a patent on the ground of novelty, there must be the merit of original invention (*Hill* v. *Thompson*, 3 Mer. 629).

In *Brook* v. *Aston*, which will serve to explain what we mean, there was a previous patent for burnishing and hardening linen and cotton yarns by means of friction brushes, and it was held on error from the Court of Queen's Bench that a patent for burnishing and hardening woollen yarns, and linen, cotton, and woollen fabrics, could not be supported (7 W. R. C. L. Dig. 62). It was the story of the spoon to eat soup with and the spoon to eat peas with over again. The *ratio decidendi* was that the application of an old method to an analogous purpose cannot be novel.

The doctrine as to novelty laid down in the leading case of *Harwood* v. *Great Northern Railway Company* (10 W. R. 442) is not obnoxious to Lord Chelmsford's criticism. Although the authorities, the Lord Chief Justice said in that case, establish that the same means, apparatus, or mechanical contrivance, cannot be applied to the same purpose, or to purposes so nearly cognate and similar as that the application of it in the one case naturally leads to the application of it when required in some other; still, the question in every case is one of degree, whether the amount of affinity or similarity which exists between the two purposes is such that they are substantially the same, and that determines whether the invention is sufficiently meritorious to be deserving of a patent.

The above rule as to novelty is exactly the same and equally applicable, whether the patent be for the application of the same method to a more or less analogous purpose, as in *Brook* v. *Aston* (*sup.*), or a more or less analogous method to the same purpose. *Harwood* v. *Great Northern Railway Company* (*sup.*), which was carried up to the House of Lords, and then decided against the patentee, was a case of the former class (see the report 14 W. R. 1, 8 H. L. Cas. 654). The subject-matter of the patent was an alleged improvement in the manufacture of the fish-plates in common use on the principal narrow gauge lines of railway in England for connecting the ends or butt-joints of the rails together. The improvement consisted in a groove or channel on the outer surface of the fish-plate, for the purpose of catching the square heads of the bolts passing through the fish-plate and the rails, and preventing the bolts from turning round when being screwed up. It appearing that grooved or channelled iron plates, with bolts let into the grooves, had been commonly used in bridge-building, for the purpose of fishing the scarf-joints of timbers, and for other purposes, the House of Lords held the patent bad for want of novelty, on the ground, already expressed in other words, that the mere application of a well-known mechanical contrivance to a purpose which was analogous to the manner or to the purpose in or to which it had hitherto been notoriously applied.

Another case of the same class, in which also the patent was upset, was *Horton* v. *Mabon* (16 C. B. N. S. 141, 12 W. R. 491), where it was held that the use of double-angle iron—a well-known article—to the construction of certain portions of gas-holders, instead of two single-angle irons riveted together, which had hitherto been used, was not the proper subject-matter for a patent, as the only result was a certain saving of labour and expense by this new way of using old material.

In *Rushton* v. *Crawley* (L. R. 10 Eq. 522) the patent was for the use of new materials to produce a well-known article. The patent was granted for the use of animal fibre, by preference Russian wool, of a coarse texture, for the manufacture of chignons and stuffing for easy chairs. It turned out that the patent was utterly bad, as wool had been employed before for the very same purpose, and the plaintiff's case altogether failed; but it will be seen that the Vice-Chancellor intimated that even if prior user had not been established, he would have dismissed the bill on the ground that the use of a new material to produce a well-known article is not the proper subject of a patent. As a recognition of the general doctrine the case is noticeable. The patentee must prove his claim to the merit of original invention, as Lord Eldon said in *Hill* v. *Thompson* (*sup.*), or the patent will not be established.

As Vice-Chancellor Malins observed in *Fox* v. *Dellestable* (15 W. R. 195), the Paragon Frames case, an invention must be novel and important. If bare novelty could support a patent, what would the public get in exchange for the patentee's monopoly? If the granting of a patent does not benefit the public as well as the inventor, where is the reciprocity? If the invention be not for the good of the realm, as the Statute of Monopolies requires—*i.e.*, for the good of the public—what do the public gain in exchange for the exclusive privilege of the inventor?

There are a few cases which seem to militate against the doctrine laid down in *Brook* v *Aston*. In *Crane* v. *Price* (4 M. & G. 580) the patent was obtained for the use of anthracite in smelting iron, combined with the hot-air blast of Neilson's famous patent of 1828. We are of opinion, said Chief Justice Tyndal in that case, that if the result produced by the combination be either a new article, or a better article, or a cheaper article to the public than that produced before by the old method, such combination may be the subject-matter of a patent. This principle will be approved of; but the decision has been disapproved, and can only be supported, according to Mr. Justice Willes in *Horton* v. *Mabon* (*sup*), on the ground that the product was a materially better or cheaper article. The importance of the manufacture

may possibly have weighed with the Court in some cases where there was little or no novelty, in the proper sense of the word. *Derosne* v. *Fairlie* (1 Gale, 109), where a patent for filtering syrup through charcoal was upheld, although it was notorious that almost every conceivable liquid except syrup had been filtered through charcoal, will scarcely be followed after the decision in *Brook* v. *Aston*.

The true test is, whether the application or combination lies so much out of the reach of the former use as not naturally to suggest itself, but to require some application of thought and study (*Penn* v. *Bibby*, *sup.*). Given this, there may be a valid patent for a new combination of materials previously in use for the same purpose, or for a new method of applying such materials (*Hill* v. *Thompson*, *sup.*); or the new application of a well-known principle (*Neilson* v. *Harford*, *sup.*); or an addition to a known thing (*Bramah* v. *Hardcastle*, Holroyd, 81 n.); or the omission of a useless part of a machine (*Minter* v. *Mower*, 6 Ad. &. E. 735); or in the substitution of a simple for a more complex mode of applying known materials to produce a known result, as in the case of James Watts' invention of the separate condenser (*Boulton* v. *Bull*, 2 H. & Bl. 498); or even a different mode of attaining the same object (*Russell* v. *Cowley*, 1 Webs. 463). But in every case there must be some invention, as Mr. Justice Willes said in *Horton* v. *Mabon* (*sup.*), and the merit of originality. By the presence or absence of these features the validity of every patent may be tried. Apply this rule to the ordinary run of modern patents, and how many will bear the test?

PARTITION ACT.

PART II.

Perhaps the most important question of practice which has occurred under the Partition Act is as to the course of procedure to be adopted when some of the persons interested cannot be found.

The 9th section of the Act enacts on this point that any person who, if the Act had not been passed, might have maintained a suit for partition, may maintain such suit against any one or more of the parties interested, without serving the others; and that at the hearing the Court may direct such inquiries as to the nature of the property, and the persons interested therein, and other matters, as it thinks necessary or proper, with a view to an order for partition or sale being made on further consideration; but that all persons, who, if the Act had not been passed, would have been necessary parties to the suit, shall be served with notice of the decree or order on the hearing.

A few cases under this section have found their way into the reports, but they appear hardly to have received the attention they deserve.

In *Dodds* v. *Gronow* (17 W. R. 511) an order was asked for for the sale of a property in the absence of one of the parties interested. But Vice-Chancellor Stuart refused to make such a decree, directed the cause to stand over, and gave leave to amend by adding parties.

In *Lester* v. *Alexander* (W. N. 1869,75), which occurred a few days after the last mentioned case, the state of things appears to have been the same; and there Vice-Chancellor Malins made a decree for the usual inquiries as to the persons entitled to the estate, and their assignees and incumbrances, and if it should appear that all parties interested were before the Court, then it was ordered that the estate should be sold in such manner as the judge in chambers should direct.

In *Clarke* v. *Johnson* (3rd March, 1870) Vice-Chancellor Stuart made a similar order. He directed an inquiry whether all parties interested were before the Court, and if that should appear so, then a sale was ordered.

In *Peters* v. *Bacon*, where the the bill showed that there were numerous persons interested besides the plaintiffs and defendants, and that some of the absent parties were out of the jurisdiction, a decree was made simply directing a sale (*Peters* v. *Bacon*, 1869, 1 B. 175). The parties, however, appear to have been advised that they could not carry out this sale without more specific authority, and as they were not aware of the addresses of some of the parties out of the jurisdiction, they took out a summons for leave to serve them with notice of the decree by advertisement, and to carry out the sale at once. The Master of the Rolls then refused to allow the sale to proceed without giving the absent parties notice, but allowed notice to be given by advertisement, and left it to the Chief Clerk to settle the advertisements, the papers in which they should appear, and the number of times they were to appear. In the meantime he ordered that the sale should not be proceeded with (*Peters* v. *Bacon*, 17 W. R. 782, L. R. 8 Eq. 125).

In *Silver* v. *Udall* (18 W. R. 665, L. R. 9 Eq. 227) the persons entitled to eight out of ten shares only were before the Court. Of the absent parties one was stated to be in New Zealand, but nothing was known of the other. The plaintiffs asked for an immediate sale, and Vice-Chancellor James declared that if there had been any evidence to show that the absent parties were out of the jurisdiction, he would have granted it; but as there was no such evidence, all that he could do was to direct an inquiry as to who were interested in the property besides the plaintiff and defendant, and in what shares, and whether they were out of the jurisdiction.

However, in *Hurry* v. *Hurry* (18 W. R. 829), where one of the parties interested was shown to be out of the jurisdiction, and all the other parties were before the Court, Vice-Chancellor James refused to allow a sale to be carried out without service or substituted service on the absent party. It appears that this case was distinguishable from *Silver* v. *Udall*, in that the legal estate was in the absent party in *Hurry* v. *Hurry*, while in *Silver* v. *Udall* it was in trustees before the Court; but it is most unreasonable that any distinction should be drawn on that account, and the correct inference is that the dictum of the Vice-Chancellor in *Silver* v. *Udall* is not law. This view is supported by the case of *Buckingham* v. *Sellick* (18 W. R. Ch. Dig. 87, 22 L. T. N. S. 370), also before Vice-Chancellor James.

It appears from these decisions that unless all parties are before the Court a decree for sale cannot be made at the hearing, but that all that can be done is to take an inquiry as to the parties interested, with a superadded direction that, in case it shall appear that they are all before the Court, the estate shall be sold. Actual or substituted service of this decree must then be effected on all parties interested, and when that has been done the sale may be proceeded with.

The 8th section of the Partition Act, 1868, enacts that sections 23, 24, and 25 of the Leases and Sales of Settled Estates Act (19 & 20 Vict. c. 120) shall apply to money received on any sale under it. In consequence of this provision, in *Hawyard* v. *Smith* (17 W. R. Ch. Dig. 116, 20 L. T. 70) a decree was made directing a sale and dispensing with the payment of the purchase-money into court, and allowing certain trustees to receive it, and divide it amongst the persons interested.

In *Roebuck* v. *Chadebet* (17 W. R. Ch. Dig. 115, L. R. 8 Eq. 127) the Master of the Rolls, putting a liberal construction on the Act, held that the Court had power to direct a sale of part of an estate, and partition of the remainder; and in *Pennington* v. *Dalbiac* (18 W. R. 684) it appears that the parts to be dealt with in either manner were left to be settled in chambers.

The 6th section of the Partition Act enacts that on any sale under the Act the Court may allow any of the parties interested to bid on such terms as to the Court may seem reasonable. Under this authority the Court, in *Pennington* v. *Dalbiac* (18 W. R. 684), allowed a plaintiff having conduct of the sale to bid, but did so on the ground that the circumstances were peculiar.

In *Bailey* v. *Hobson* (18 W. R. 124, L. R. 5 Ch. 180), one of the defendants, who was entitled to one-sixth of the property, had been in possession of the whole for

See Smith v. Watts, L.R. 6 Ch. 213

about two years. The property consisted of farming land. After a decree for sale had been made, but before it could be carried out—that is to say in November, 1869—this defendant advertised for sale the whole of the hay and turnips of that year's growth, with liberty to the purchaser to take them off the land. The plaintiff moved for an injunction to restrain this sale, on the ground that it was contrary to the custom of the country, and injurious to the land. An injunction was granted in the first instance, but the order was reversed by Lord Justice Giffard on appeal. His Lordship entertained no doubt as to the jurisdiction of the Court to grant an injunction under the circumstances to restrain waste, or any acts amounting to a destruction of the property, but considered that the sale of hay and turnips was not an act of that nature.

In *Evans* v. *Bagshawe* (18 W. R. 657, L. R. 8 Eq. 469, 5 Ch. 340), a partition suit failed, because the plaintiffs had only an interest in reversion at the time of the filing of the bill. The objection was taken by the answer, and the plaintiffs then bought up the intervening estate, and introduced a statement to that effect into their bill by amendment. It was held however that the defect was not thereby cured, and that their proper course would have been to have filed a new bill. The bill was therefore dismissed with costs.

In *Bull* v. *Bull* (18 L. T. N. S. 870, 16 W. R. Ch. Dig. 95) a reference was directed to chambers, without issuing a commission, although one of the parties interested was an infant. And in *Moorehead* v. *Moorehead* (I. R. 2 Eq. 492, 17 W. R. Ch. Dig. 115), where partition was made of an estate, and a conveyance could not be executed because one of the parties interested was a lunatic, the lunatic was declared a trustee for the other parties of the parts allotted to them.

This summary comprises, we believe, all the reported cases on the subject of partition which have occurred since the beginning of the year 1868.

RECENT DECISIONS.

COMMON LAW.

MASTER AND SERVANT—RAILWAY COMPANY—ARREST BY SERVANT—IMPLIED AUTHORITY.

Allen v. *London and South Western Railway Company*, Q.B., 19 W. R. 127.

That a master is liable for the wrongful acts of his servant committed in the course of the servant's employment is a proposition that is never disputed, and the general principle upon which the rule is based is well laid down in *Limpus* v. *The General Omnibus Company* (11 W. R. 149). This rule applies to railway companies as well as to other masters, and in *Goff* v. *Great Western Railway Company* (30 L. J. Q. B. 148), the company were held liable for a wrongful arrest by their servants of a passenger for alleged non-payment of his fare. The company had statutory power to arrest passengers for non-payment of fares, and it was decided that their servants must be considered to have implied authority to exercise this power, which was clearly for the benefit of the company if properly exercised. The wrongful act was done by the company's servants acting as their servants, and the company were therefore liable. In *Poulton* v. *London and South Western Railway Company* (16 W. R. 309), a passenger was arrested for non-payment of the fare of a horse. The company had no power to arrest for such a cause, and it was, therefore, held that their servants could not be considered as having any implied authority to do that which under no circumstances could be legally done. The distinction between the two cases is fine, but perfectly clear. In *Goff's case* there was a right to arrest if the supposed facts had actually existed, and such arrest would clearly be for the benefit of the company, as it would protect their profits. It would, moreover, be the exercise of a right specially given to the company for their own protection, and not a right possessed by the public at large. The company's servants, therefore, had implied authority to exercise this right, and the company were liable for its wrongful exercise. In *Poulton's case* there was no right to arrest, even if the supposed facts actually existed; and, therefore, there could be no implied authority to arrest, and consequently no liability on the part of the company for such a wrongful arrest. The principles followed in these two cases were recognised in *Edwards* v. *London and North Western Railway Company* (18 W. R. 834), where a foreman porter of the defendants wrongfully gave the plaintiff in charge for an alleged theft of the defendants' property. It was held that the defendants were not liable, as it was not part of the foreman's duty as servant to give thieves in charge. The defendants' servants had no special power as servants of the defendants to arrest for felony, and, therefore, there was no implied authority for them to do so in a case like this, where the giving in charge was only for the benefit of the public at large. In *Edward's case* it was suggested by Montague Smith and Brett, JJ., that a railway company *might* in some cases be liable for a wrongful arrest on a charge of felony by one of their servants, if from the nature of the servant's duty, it might be assumed that it was part of his employment to give persons in charge for committing felonies, as if the servant were a watchman. This last point has, however, never been actually decided one way or the other.

In *Allen* v. *The London and South Western Railway Company*, the principles of former cases are recognised, and an important rule is laid down with respect to the liability of masters for wrongful arrests by their servants. There one of the defendants' ticket distributors wrongfully gave the plaintiff in charge to a police constable for attempting to steal money out of the till, in other words for an attempt to commit a felony. If the plaintiff had in fact attempted to steal the money the offence would have been only a misdemeanour, and there would have been no right on the part of the defendants' servant to arrest the plaintiff. The decision was that the defendants were not liable for their servant's act, and this decision might have been rested on the ground that if the supposed facts existed there would have been no right to arrest. This would apparently have been a good defence to the action on the authority of *Poulton's case*, the *ratio decidendi* of which was, as put by Blackburn, J., during the argument in this case, that "it could not be supposed that the railway company had given their servant authority to commit a trespass on their behalf." The judgments, however, lay down a much wider principle—viz., that a servant entrusted with property has no implied authority to put the law in motion to punish attempts made on or injury to that property. The judgments distinguish carefully between acts done by a servant for the protection of his master's property and acts done for the punishment of an offence. The punishment of a criminal for taking or attempting to take property does not defend that particular property, but is useful as protecting all property; and the criminal law can, of course, be set in motion by a person who has not been injured by the crime as freely as by the person who has suffered. Blackburn, J., says "there is a great distinction between an act done to prevent a crime or to undo what has been done, and an act which has for its object to secure the punishment of an offence which has been committed. Can there be an implied authority to invoke public justice to punish?" He then notices that where a power of arrest is specifically given by statute for the protection of a company's interest, as in *Goff's case*, that the arrest is not merely to secure punishment, and therefore an authority to arrest may be implied; and he continues, "even if the agent (the defendants' servant in *Allen's case*) had the right to cause the plaintiff to be imprisoned, he could but have exercised the power as a private citizen, on his individual

responsibility, and his personal idea of what was necessary in the vindication of public justice." Lush, J., says, "If the plaintiff had done all that it was imputed to him that he had only attempted to do, there would have been no duty incumbent on the clerk, *as a servant*, to punish him, still less to do so for an attempt which had altogether failed." These judgments, therefore, show clearly the difference between an act done for the protection of property, and one done to punish any injury to property. The former is done *as servant*, and may render the master liable, the latter as a *private citizen*, and renders no one liable except the wrongdoer himself. The two cases of *Walker* v. *The South Eastern Railway Company*, and *Smith* v. *The South Eastern Railway Company* (18 W. R. 1032) may be usefully compared with *Allen's case*. In those cases the liability of a railway company for arrests by constables employed by them, is discussed, and the decisions are quite in accordance with the principles of *Allen's case*, and of the other cases to which we have referred.

REVIEWS.

Commentaries upon International Law. By Sir ROBERT PHILLIMORE, D.C.L., Member of Her Majesty's Most Honourable Privy Council and Judge of the High Court of Admiralty. Vol. 1. Second edition. London: Butterworths.

During the first period of the growth of a system of law, the most useful legal literature is that which supplies authorities. Those who then write text-books perform the most useful work in simply collecting the sources of law. As the system grows and developes, an entirely different want has to be provided for. It is the arrangement, and not the supply of authorities that is then required. English law has fully reached this latter period, and now mere digests of cases and authorities, although very useful as mines of information, are far too cumbersome for ordinary use.

International law is in a much earlier stage of advancement than English law, and text-writers on international law may still do good service by collecting the vast mass of materials from which eventaally the law will be completely evolved. This is the form in which, to a greater or less extent, almost all books on international law (excepting the recent and valuable work by Bluntschli) have been written; although, of course, they differ much from one another in their method of treating the subject. In some the reader has to ascertain for himself from the materials put before him, without any help from the author, the principles of international law, while in others he receives more or less assistance in that arduous task. It is to the former class of treatises that the work now before us most emphatically belongs. In no sense is it a book that deals with principles. The reader will search in vain for clear statements of the result of the authorities that are here heaped up in profusion, or for accurate reasoning in the discussion of any question in detail. Abundance of learning and research is brought to bear on the various points examined; but there is no evidence of that thorough comprehension of the subject dealt with that is essential in all legal works. The first part of the volume, which treats of "Sources of International Law," brings out these characteristics most clearly. Sixty-three pages are occupied in recounting what has been said, however foolish, on this subject by former writers, and the reader is left to ascertain for himself what it all comes to. As an instance of the application of international law we find (p. 67, *et seq.*) the case of the seizure of the opium of British merchants at Canton by the Emperor of China in 1839. The question raised was, as stated here, whether the compensation to be made by the Chinese Government was "the *cost* price of the property or its *market* price at the place of seizure." A simple and intelligible question, although one about which we imagine there could be no real doubt. In the discussion of this question we are overwhelmed with authorities. Pothier, the Digest, Code, and Institutes of Justinian, Voet, Emerigon, Grotius, Vattel, and a number of English reported cases are referred to. As might be expected, this cloud of authorities very much obscures the attempted explanation; while there is a complete confusion between the question of cost price and market price at place of seizure, and the question of price at *time* of seizure and at *time* of compensation—two quite distinct questions. The authorities have but little to do with the point under discussion, and the end of this is that "the conclusion, then, to which we are led . . . from the application of the principles of international law" [most of the authorities cited are directly opposed to this conclusion] "is this—that the British Government would have been justified by the law of nations in demanding the *cost* price of the opium"—even if there had been a depreciation of value in price between the time of the seizure and the time of compensation. What was in fact settled between the two Governments we are not told, nor whether the cost price or market price was the higher, nor whether there was in fact any depreciation of value between seizure and compensation. In the seven pages that deal with this illustration of international law we find neither the facts of the case that is discussed, nor the rules which ought to have been applied to the case, nor the rules which were applied. Instead of the facts, the argument, and the conclusion, we find an omission of material facts, irrelevent arguments, and no conclusion. This is a specimen of the way in which questions are argued in this book by reference to authorities. Arguments by reference to principle are equally feeble. At pp. 347, 348, which deal with some questions respecting the slave trade, the attempt at reasoning is singularly weak, and that which is put forward as a *reductio ad absurdum* is not a *reductio ad adsurdum* at all.

These faults, of course, render it impossible that this treatise should be ranked amongst the great works on international law, notwithstanding the high judicial position of the author. It has, however, a great value as a mere collection of materials from which anyone at all familiar with the subject can derive much assistance. The authorities referred to are generally cited very fully, and this is a great benefit in dealing with a subject like international law, the authorities for which are so often treaties, despatches, state papers, and similar documents not readily accessible to the ordinary reader. The collection and extracting of these is a work of much difficulty and has been well performed. For instance, at p. 48 *et. seq.* there is a useful list of all the principal treaties which affect international law. The slave trade treaties are collected at pp. 360 and 361, and at p. 244 the convention between England and America respecting the ship canal through the isthmus of central America is set out in full, and there are full extracts from other treaties, such as that of 1815 at Vienna and of 1846 at Washington, &c. This abundance of quotation is extremely useful in dealing with authorities not readily obtained. In addition to this, however, there is a great deal of unnecessary quotation, whole pages being extracted from Lord Stowell's reported judgments, from Grotius and other equally well known and accessible books.

Amongst the subjects dealt with in this volume are two that are at present exciting great interest—viz., the right of navigation of the river St. Lawrence and the recognition of the Confederate States as belligerents. As to the claim of this country to the exclusive right of navigation in the St. Lawrence Sir Robert Phillimore says: "It seems difficult to deny that Great Britain may have grounded her refusal upon strict law; but it is at least equally difficult to deny—first, that in so doing she puts in force an extreme and hard law; secondly, that her conduct, with respect to the navigation of the St. Lawrence, was inconsistent with her conduct in respect to the navigation of the Mississippi" (p. 207). This passage was quoted by President Grant in his last message to Congress as the opinion "of the greatest living British authority."

We should be unwilling to admit this book amongst the authorities which have weight in determining the rules of international law, but if it is to be quoted as an authority for the United States respecting the St. Lawrence, it may also be quoted respecting the recognition of the Confederates as belligerents as to which we find this passage (p. 477):—"England and France, during the late American civil war recognised the Southern Confederacy as belligerents; and, though, in the heat and irritation of civil contest, the Government of the United States resented this qualified and necessary recognition, it was clearly a matter of simple justice and strict neutrality; a further recognition by sending an accredited minister to a *de facto* state like the Southern Confederacy, with a regular government and a large army, would not have afforded a justifying cause of war to the other belligerent."

This edition contains all the matter in the first edition, to which is now added the new materials that the years since 1854 have produced, such as the termination of the Reciprocity Treaty respecting Canada and the United States, the Naturalisation Acts of 1868 and 1870 in the United States and England respectively, &c. &c. There is also a useful summary in the preface of events that have taken place since 1854. The necessary alterations have not, however, always been made, as at p. 387, where the law respecting the liability to punishment in England for murder or manslaughter committed abroad is wrongly stated, in consequence of no notice being taken of 24 & 25 Vict. c. 100, s. 9, which was passed in 1851, and therefore since the first edition was published. Generally, however, the editing is well done. There is an appendix containing the Foreign Enlistment Act of Geo. 3, and the new Foreign Enlistment Act of last year, the American Foreign Enlistment Act, and much other matter of greater or less importance. The present edition contains about 100 pages more than the former one.

The Statutes. Revised Edition. Vol. I. Henry III. to James II. A.D. 1235–6—1685. By Authority. London: Printed by George William Eyre & Wm. Spottiswoode, Printers to the Queen's Most Excellent Majesty. 1870.

It is not quite twelve months since we were called on to notice the first fruits of the Statute Law Revision Commissioners, in the shape of the Chronological Table and Index of the Statutes up to the end of the year 1869. They have now presented us with a first instalment of the Revised Edition of the Statutes, comprising, in one handsome volume, the statutes from the beginning of Henry III. to the end of James I. Everything which had been repealed up to the end of last session is here excised, and thus we have in one volume all the existing statute law for the period embraced. The edition followed is that of the Record Commissioners, known as "The Statutes of the Realm." Where a part of an Act, though repealed, is material to the construction of the unrepealed part, such repealed part is printed in a smaller type, with a note of the repeal; and "where there might possibly be a question as to the operation of a repeal, the part considered to be covered by the repeal is printed in small type, and the note of the repeal states the terms of the repeal." Some Acts considered as "not of practical legal value" are reserved for a supplemental volume to be issued hereafter. Among these are the Act of 16 Car. 1, c. 14, of the "Illegality of the late proceedings concerning ship-money," the Act for the confirmation of legal proceedings during the Commonwealth, and various Acts about bounds of forests, militia, the holding of Parliaments, levying of aids, &c., &c. The value of such a work as that now placed before the public requires no comment. Here we have, "smelted," as Mr. Carlyle might say, "out of the huge dross heap," the comparatively small residuum of law remaining in force. The volume is admirably printed on toned paper; and the statutes are supplemented by a selection of the greater part of the notes to the Record Commissioners' edition, and prefaced by a table of variances from Ruffhead's edition, a chronological table, and an interesting extract from the Record Commissioners' Introduction, besides an introduction to the present work. The Latin and Law French Acts are printed with a translation in double column. It is not too much to say that every lawyer ought to possess this volume and its successors.

When the repealed law has been thus eliminated, there remains a considerable amount of law which is of little practical importance, and some which, for any actual weight left to it, is entirely obsolete. The provision, for instance, of 20 Edw. 3, which authorises freemen owing suit to county, tything, hundred, and wapentake, or to a lord's court, to appoint their attorneys to do suit for them, is, for practical purposes, a dead letter, but as a piece of unrepealed legislation it is entitled to a place.

In turning over the leaves of this admirably executed and most useful volume one can hardly avoid speculating upon the bulk of the series of which it forms the first instalment Ruffhead's 12mo edition, the one generally used in the legal profession, is comprised, up to the end of last session, in 110 volumes. In point of time the volume before us has disposed of 450 years out of the whole 635, but in point of bulk the whole legislation of the 450 years from 1235 to 1685 was comprised in 8 only of the 12mo Ruffhead's volumes, and thus there are 102 left to be disposed of. In the early centuries it took several reigns to fill a volume, whereas now for many, many years every year has required a volume to itself. If the 102 volumes remaining yield, volume for volume, the same, and only the same, amount of unrepealed law as the old ones, 11 more revised volumes will be required to complete the series up to the end of 1870. We may therefore take 11 volumes as the lowest possible number; in all probability the number will be greater.

COURTS.

JUDGES' CHAMBERS.

(Before MARTIN, B.)

Jan. 2.—*The Debtors Act*, 1869, *s.* 6—Capias *against defendant about to go abroad.*

An application was made to Mr. Baron Martin to grant a *capias* against a defendant, who was about to leave the country, and it was stated that he had sufficient money in his pocket to pay.

MARTIN, B., said that according to the 6th section of 32 & 33 Vict. c. 62, it must be shown that the defendant's absence would prejudice the plaintiff. He did not know why the law had been altered.

The attorney said the defendant's presence was necessary to prove his acceptance to the bill of exchange he had given.

MARTIN, B., said other persons could prove his handwriting. Unless the allegation was made in the affidavit, he had no power, as the law was now altered, to grant a *capias* to hold to bail.

Application refused.

VICE-CHANCELLOR OF THE COUNTY PALATINE OF LANCASTER.

Re The Liverpool and District Permanent Benefit Building Society.
McConnan's claim.

Benefit building society—Borrowing—Society formed to take over the assets and liabilities of another society.

A benefit building society with £100 *shares was, by one of its rules, authorised to borrow money for the purposes of the society, and in* 1853 *the claimant advanced* £300 *to the society upon a promissory note. In* 1861 *it was desired to reduce the shares from* £100 *to* £10, *and by way of effecting this object a new society was formed, which purported to take over the assets and liabilities of the society. The interest on the* £300 *was regularly paid, first by the old and afterwards by the new society.*

The new society having been ordered to be wound up, the claimant claimed to be paid the £300 *out of the assets.*

Held—(1.) *That the above-mentioned rule of the old society was, as a rule authorising unlimited borrowing,* ultra vires.

(2.) *That for one society to take over the mass of assets and liabilities of another society was* ultra vires; *and*

(3.) *It being illegal for the new society to undertake a liability to the claimant for the* £300, *acquiescence could not validate the transaction.*

The claim was therefore disallowed.

The Liverpool and District Permanent Benefit Building Society was established in 1852 as a benefit building society with £100 shares. The 25th rule of the society was as follows:—

"Advances from Bankers and others.

That if the committee should deem it advantageous to the society to obtain advances from their bankers or other person for the purposes of the society, it shall be lawful for them so to do with the written consent of the trustees."

The following is taken from the admissions agreed upon by both sides.

"In April, 1853, the applicant, Mrs. McConnan, jointly with one Bell (since deceased), advanced to the old society the sum of £300, taking from the society a promissory note for such sum. The society regularly paid half-yearly interest at £5 per cent. on this advance down to the end of the year 1860, when the society was terminated under the following circumstances:—

It was desired to reduce the shares in the old society from £100 to £10, and the only practical way of doing so was by establishing a new society to take the place of the old one. The above-named society* was thereupon established in January, 1861. It took over the assets and liabilities of

* The Liverpool and District Permanent Benefit Building Society. The new society retained the name of the old one.

the old society, and all the securities of the old society were transferred to the present one. The assets were estimated at £7,425 3s. 2d., and the liabilities on promissory notes at £450 (including the £300 the subject of the present claim). The new society entered the respective amounts of these assets and liabilities in their books. They debited an account called the Loan Account with this £300, putting against it the name of Mrs. McConnan, and down to the date of the order to wind up the society they had regularly paid her the half-yearly interest.

The new society has received about three-fourths of the assets of the old society. The official liquidator has now funds in hand wherewith the applicant's claim can be paid should the Court direct him to do so."

The rules of the new society did not comprise any rule authorising the society to obtain advances of money upon loan; and the "objects of the society" were defined in rule 1 to be the "raising, by the monthly subscriptions of the several members of such society, shares not exceeding the value of £10 for each share (such subscriptions as are hereafter by these rules particularly specified, not exceeding in the whole twenty shillings per month for each share), a stock or fund for the purpose of enabling each member thereof to receive out of the funds of such society the amount or value of his or her share or shares therein, to meet or purchase one or more dwelling-house or dwelling-houses, or other real or leasehold estate, to be secured by way of mortgage to such society, until the amount or value of his or her shares shall have been fully repaid to such society, with the interest thereon, and all fines or other payments incurred in respect thereof."

In 1870 the new society was ordered to be wound up, and the official liquidator disputed Mrs. McConnan's claim The matter now came before the Vice-Chancellor.

Lake, for Mrs. McConnan.

Ford North and *Bardswell*, *contra*, for the official liquidator.

Vice-Chancellor WICKENS.—"I cannot think that there is any great difficulty in this case, which I can acknowledge sitting here. It seems to me that the old society had no power to borrow, for I cannot read the power except as an unlimited power, and an unlimited power is nothing according to the authorities; but even if the old society had power to borrow, the new society had no power to borrow, and the question is whether there is a debt affecting the new society in consequence of what has taken place.

The second society could, I think, in no way have given to itself a power to borrow, such as is supposed to have been exercised—that is to say, a power to purchase assets from a third person or another society by undertaking its liabilities. That, you will observe, is a very complicated power to borrow indeed. A building society, I take it, is originally a society of this sort:—There are certain profits to be made by lending money and borrowing money, and the lenders and borrowers make themselves into a society and divide the profits themselves, so as to exclude the intervention of third persons who take the profits between lender and borrower; and that being so, I should be very much inclined, independent of authority, to agree that a power to borrow money from persons outside was out of the contemplation of such a society; but it appears to have been held, and one can perfectly understand the decision, that in very limited terms a power of borrowing may be given, because a power of borrowing for temporary purposes may be ancillary to the express purpose of the society—that is, there may be times when it is necessary to raise certain sums by way of loan for the purpose of enabling the borrowers and lenders to make their arrangements in sufficient time between themselves. But it does not go further than that, and therefore falls very far short of the power which I am asked to suppose that this second society had—the power to take a mass of assets, undertaking a mass of liabilities. I say that is much more beyond the purview of a society of this sort, and, therefore, a much more illegal rule than a power to borrow generally for the purposes of the society, which latter power I hold to be a bad one. Therefore, I say if there be among these rules a power authorising the second society to do what it has done, it would be an illegal rule, and if that is so, it is absolutely impossible that there could be anything in the way of acquiescence which could justify that which the rule itself would not have justified. It seems to me that the case fails altogether."

Counsel for the official liquidator not asking for costs against the applicant, the only order as to costs was that the official liquidator should have his costs out of the estate.

Solicitor for the claimant, *George Haigh*.

Solicitors for the official liquidator, *Tyrer, Smith & Kenion*.

LIVERPOOL COURT OF PASSAGE.

(Before — ASSESSOR.)

Dec. 14.—*The* Nuova Raffalina.

32 & 33 *Vict.* c. 51 (*County Courts Admiralty Jurisdiction Act* (1868) *Amendment Act*).

This was a notice to dismiss a suit for want of jurisdiction. The plaintiffs, Messrs. Japp & Kirby, ship-brokers, of Liverpool, claimed £87 14s. 9d. as commission on a charter-party.

The *Nuovo Raffalina*, a ship of Genoa, being in the port of Liverpool, her captain entered into negotiations with Messrs. Japp & Kirby to obtain a freight for her to some foreign port. In the course of the negotiations several telegrams passed between the owners at Genoa and the captain (through Messrs. Japp & Kirby), and a charter-party was signed by the captain; but ultimately, owing to a difference about the time to be allowed for arriving out, the captain freighted under another charter-party negotiated through another firm of brokers, having, as he alleged, been told by the plaintiffs that he was free to do so. When the vessel was about to sail she was arrested by the plaintiffs, but was afterwards released on payment of £137 into Court.

Gainsford Bruce, for the owners, now moved to dismiss the suit for want of jurisdiction. He cited the *Dowse*, 18 W. R. 1008, and contended that upon the proper and reasonable construction of sub-section 1 of the 2nd section of 32 & 33 Vict. c. 51, having regard to the intention of the statute, the words "any claim arising out of any agreement made in relation to the use of hire of any ship," were designed to cover merely claims arising directly out of the use or hire, and could not be taken to include a claim for commission for negotiating a hiring.

Russell, *contra*, urged that the grammatical signification of the words, judged by common rules of interpretation, clearly comprehended the case.

The ASSESSOR made an order to dismiss the suit with costs, on the ground that the claim was not within sub-section 1 of the 2nd section of the Act, and that consequently the Court had no jurisdiction.*

Solicitors for the plaintiffs, *Tyrer, Smith, & Kenion*.

Solicitor for the defendants, *C. E. Bretherton*.

POLICE COURTS.

LAMBETH.

(Before Mr. CHANCE.)

Dec. 5.—Mr. CHANCE to-day gave his considered judgment on three summonses taken out by the police authorities against the secretary of the Metropolitan Tramway Company, for allowing more passengers to be carried than the carriages were licensed for under the Metropolitan Stage Carriage Act, 6 & 7 Vict. c. 86. The passengers rode on the platform of the car.

Besley (*Humphreys* with him), for the company, contended that, though licences had been obtained for the tramway cars, and for the drivers and conductors, yet the company was not liable, as tramways were "horse railways," and not under the provisions of the ordinary Acts relating to stage carriages.

Mr. CHANCE thought that the platform of the carriage, or by whatever name it was called, upon which the conductor stood, if not a "step," was a place provided for him within the meaning of the Act 6 & 7 Vict. c. 86, s. 33, and assuming it to be a Metropolitan stage carriage, an offence had been committed by allowing persons to ride on the platform besides the conductor. With regard to the wider and more important question as to a metropolitan stage carriage, after reading the Act as to the rules and regulations for the same, he was of opinion that a tramway carriage came within the definition, and unless there was some special provision declaring that tramway carriages should not be subject to the rules and regulations applying to other metropolitan stage carriages, he was bound to hold that they were subject to them. Irrespective, however, of any provision in the Tramway Act, it was

* The order to dismiss was in these terms. We understand that notice of appeal has been given by the plaintiffs.

difficult to understand why tramways should be exempt from the rules and regulations made for the public protection. The nature of a railway company was altogether different from a tramway. The land on which the rails of a railway were laid was private property, whereas a tramway company had no property whatever in the soil; they had a limited user, and the public, subject to that user, had an equal right to the highway. His decision was against the company, and he imposed a fine of 10s., with costs, in each of the three cases. He granted a special case to the superior court, and declined to make any order as to passengers being, in the interim, allowed to stand on the platform.

GENERAL CORRESPONDENCE.

THE COUNTY COURTS AND THE SUPERIOR COURTS.

Sir,—A letter in the *Telegraph*, signed "Attorneys," contains a strange confusion of ideas. The writers obtained a judgment in a superior court for £18, and as the defendant had no goods a summons for commitment was taken out in the same court. The defendant appeared in person on the hearing, and admitted that his income was £5 10s. per week, sometimes more. On this evidence the judge refused to commit, or even to order payment by instalments, to the great indignation of "Attorneys." To denounce the law in consequence seems a waste of energy. Does not the fault lie with the administrator of the law?

It is generally understood that the superior court judges desire to send cases of this kind to the county courts. Probably this desire is the real reason for the refusal to commit in this case. "Attorneys" are not, as they suppose, left without a remedy. Let them, as provided by the Debtors Act, take a certified copy of the record of judgment to the proper county court, and they will in all probability be able to convince the judge there that such a debtor can pay say £2 or £3 a month at least. LAWYER.

APPOINTMENTS.

Sir THOMAS ERSKINE MAY, barrister-at-law, Clerk Assistant to the House of Commons, has been appointed to succeed Sir Denis Le Marchant as Clerk. Sir Erskine May was born in 1815, and was educated at Bedford School under Dr. Brereton. He entered the public service, as Assistant Librarian of the House of Commons, in 1831, and was called to the bar at the Middle Temple in May, 1838. In 1846 he was appointed Examiner of Petitions for Private Bills, and in the following year became Taxing Master of the House of Commons. In 1856 he was promoted to the table of the House, as Clerk Assistant. In 1860 his public services were rewarded by the bestowal of the Companionship of the Bath, and he was elevated to the rank of Knight Commander in July 1866. Sir Erskine May is the author of several legal and parliamentary works, the first of which was "a Treatise on the Laws, Privileges, Proceedings, and Usages of Parliament," published in 1844, which has passed through six editions, and is well known as "May's Parliamentary Practice." In 1849 he published a pamphlet, entitled "Remarks and Suggestions with a view to Facilitate the Despatch of Public Business in Parliament;" and in 1850 another pamphlet, "on the Consolidation of the Election Laws." Sir Erskine May is also the author of another very well known book, the "Constitutional History of England since the Accession of George III., 1760—1860," published between 1861 and 1863, which, commencing where Hallam concluded, continues the history of our laws and liberties to the present time. In 1854 he collected and arranged, for the first time, the "Rules, Orders, and Forms of Proceeding of the House of Commons," which were adopted and printed by command of the House. He is a member of the Digest of Law Commission.

Mr. GEORGE CAMPBELL, barrister-at-law, of the Bengal Civil Service, has been appointed to the office of Lieutenant-Governor of Bengal. Mr. Campbell is the eldest son of the late Sir George Campbell, of Edenwood, Fifeshire, by Margaret, daughter of A. Christie, Esq., of Ferrybank; he is therefore a nephew of the late Lord Chancellor Campbell, who was a younger brother of Sir George. Mr. Campbell was born in 1826, and was educated at Eton, and at Trinity College, Cambridge. He entered the Bengal Civil Service in 1842, and after filling various offices he was appointed Judicial Commissioner of the province of Oude, in May, 1858. He had previously come to England to study law, and was called to the Bar at the Inner Temple in January, 1854. In 1862, on the establishment of the High Court of Judicature at Calcutta, he was appointed one of the puisne judges of that tribunal, but was in 1868 appointed Commissioner of the Central Provinces at Nagpore, which office he has held up to the present time. Mr. Campbell married, in 1853, Letitia, daughter of Mr. Henry Vibart.

Mr. HENRY GREY FABER, solicitor, of Stockton-on-Tees, Durham, and town clerk of that borough, has been appointed Clerk to the Stockton School Board. Mr. Faber was admitted in 1854, and besides the town clerkship, he holds the offices of clerk to the county justices for the division of Stockton ward, clerk to the borough justices, and clerk to the Commissioners of Taxes.

FOREIGN TRIBUNALS & JURISPRUDENCE.

AMERICA.

UNITED STATES SUPREME COURT.

The National Bank of the Republic, Plaintiff in Error, v. *Rees J. Millard.*

Banker's cheque—Liability of drawee.

In error to the Supreme Court of the District of Columbia.

Mr. Justice DAVIS delivered the opinion of the Court.—This is an action of assumpsit brought by the defendant in error against the National Bank of the Republic, for failing to pay a cheque drawn on it in his favour by one Lawler, a paymaster in the United States army. The declaration, in addition to the special count on the transaction, contained a general count for money had and received by the defendant to the use of the plaintiff. The only question presented by the record which it is material to notice is this: Can the holder of a bank-cheque sue the bank for refusing payment, in the absence of proof that it was accepted by the bank, or charged against the drawer?

It is no longer an open question in this court, since the decision, in the cases of the *Marine Bank* v. *The Fulton Bank* (2 Wallace), and of *Thompson* v. *Riggs* (5 Wallace), that the relation of banker and customer in their pecuniary dealings is that of debtor and creditor. It is an important part of the business of banking to receive deposits, but when they are received, unless there are stipulations to the contrary, they belong to the bank, become part of its general funds, and can be loaned by it as other moneys. The banker is accountable for the deposits which he receives as a debtor, and he agrees to discharge these debts by honouring the cheques which the depositors shall from time to time draw on him. The contract between the parties is purely a legal one, and has nothing of the nature of a trust in it. This subject was fully discussed by Lords Cottenham, Brougham, Lyndhurst, and Campbell, in the House of Lords, in the case of *Foley* v. *Hill* (2 Cl. & Fin. 28), and they all concurred in the opinion that the relation between a banker and customer who pays money into the bank, or to whose credit money is placed there, is the ordinary relation of debtor and creditor, and does not partake of a fiduciary character, and the great weight of American authority is to the same effect.

As cheques on bankers are in constant use, and have been adopted by the commercial world generally as a substitute for other modes of payment, it is important, for the security of all parties concerned, that there should be no mistake about the status which the holder of a cheque sustains towards the bank on which it was drawn. It is very clear that he can sue the drawer if payment is refused; but can he also, in such a state of the case, sue the bank? It is conceded that the depositor can bring assumpsit for the breach of the contract to honour his cheques; and if the holder has a similar right, then the anomaly is presented of a right of action upon one promise for the same thing existing in two distinct persons at the same time. On principle, there can be no foundation for an action on the part of the holder, unless there is a privity of contract between him and the bank. How can there be such a privity when the bank owes no duty and is under no obligation to the holder? The holder takes the cheque on the credit of the drawer in the belief that he has funds to meet it, but in no sense can the bank be said to be connected with the transaction. If it were true that there was a privity of contract between the banker and holder when the cheque was given, the bank would be

obliged to pay the cheque, although the drawer, before it was presented had countermanded it, and although other cheques, drawn after it was issued, but before payment of it was demanded, had exhausted the funds of the depositor. If such a result should follow the giving of cheques, it is easy to see that bankers would be compelled to abandon altogether the business of keeping deposit accounts for their customers. If, then, the bank did not contract with the holder of the cheque to pay it at the time it was given, how can it be said that it owes any duty to the holder until the cheque is presented and accepted? The right of the depositor, as was said by an eminent judge (2 Selden, 417), is a chose in action, and his cheque does not transfer the debt, or give a lien upon it to a third person without the assent of the depositary. This is a well-established principle of law, and is sustained by the English and American decisions (*Chapman* v. *White*, 2 Selden, 412; *Butterworth* v. *Peck*, 5 Bosworth, 341; *Ballard* v. *Randall*, 1 Gray, 605; *Harker* v. *Anderson*, 21 Wendell, 373; *Dykers* v. *Leather Manufacturing Company*, 11 Paige, 616; *National Bank* v. *Eliot Bank*, 5 Am. Law. Reg. 711; Parsons on Bills and Notes, ed., 1863, pages 59, 60, 61, and notes; Parke, B., in argument in *Bellaney* v. *Majoribanks*, 7 Exch. 389, 404; *Wharton* v. *Walker*, 4 B. & C. 163; *Warwick* v. *Rogers*, 5 M. & G. 374; Byles on Bills, chap., Cheque on a Banker; Grant on Banking, London ed. 1856, p. 96). The few cases which assert a contrary doctrine, it would serve no useful purposes to review.

Testing the case at bar by these legal rules, it is apparent that the Court below, after the plaintiff closed his case, should have instructed the jury, as requested by the defendant, that the plaintiff, on the evidence submitted by him, was not entitled to recover. The defendant did not accept the cheque for the plaintiff nor promise him to pay it, but, on the contrary, refused to do so. If it were true, as the evidence tended to show, that the bank, before the cheque came to the plaintiff's hands, paid it on a forged indorsement of his signature to a person not authorised to receive the money, it does not follow that the bank promised the plaintiff to pay the money again to him, on the presentation of the cheque by him for payment.

It may be, if it could be shown that the bank had charged the cheque on its books against the drawer, and settled with him on that basis, that the plaintiff could recover on the count for money had and received, on the ground that the rule *ex æquo et bono* would be applicable; as the bank, having assented to the order and communicated its assent to the paymaster, would be considered as holding the money thus appropriated for the plaintiff's use, and, therefore, under an implied promise to him to pay it on demand.

It is hardly necessary to say that the cheque in question, having been drawn on a public depositary, by an officer of the Government, in favour of a public creditor, cannot change the rights of the parties to this suit. The cheque was commercial paper, and subject to the laws which govern such paper, and it can make no difference whether the parties to it are private persons or public agents (*The U. S.* v. *Bank of Metropolis*, 15 *Peters*, 377).

As soon as the deposit was made to the credit of Lawler, as paymaster, the bank was authorised to deal with it as its own, and became answerable to Lawler for the debt in the same manner that it would have been had the deposit been placed to his personal credit.

As the case will be remanded for a new trial, it is not neccessary to notice the exceptions taken to the charge of the Court on the evidence introduced by the defendant.

Judgment reversed and a *venire de novo* awarded.—*New York Daily Transcript.*

COURT OF APPEALS, NEW YORK.

June 21st.—*Mary Ann Dexter, Administratrix, &c.*, v. *the Syracuse, Binghamton, and New York Railroad Company, Appellant.*

Common carrier—Liability for passengers' luggage.

Appeal from a judgment ordered by the General Term of the Supreme Court, in the Sixth District, upon exceptions there heard in the first instance, upon a verdict for 304.10 dols., rendered at the Cortland circuit, in favour of the plaintiff's intestate.

This action was brought to recover the value of a trunk and its contents lost upon the defendant's railroad. The plaintiff's intestate (her husband) was a passenger from New York, by way of the Erie and the defendant's railroad, to Cortland, where he resided. He purchased in New York the trunk and its contents, consisting of wearing apparel for himself, some for his wife, and other articles for other members of his family, including the material for two dresses, and also the material for a dress intended for his landlady. The trunk was received and checked by the Erie to Binghamton, and there by the defendant's agents, as traveller's baggage, in the usual manner. On the arrival of the deceased at Cortland, he presented the check for his trunk and it was not delivered, and was not afterwards found by the defendant's company. The case was tried at the circuit in Cortland county, in January, 1867, when the above facts appeared. The defendant's counsel moved for a nonsuit, on various grounds then stated, as follows:— 1. That the defendant was not liable for the trunk and its contents as the baggage of a passenger. 2. That defendant was not liable for the trunk and its contents as the baggage of a passenger, the same not in fact being baggage. 3. That the defendant is not liable for the same as freight, it not having been shipped as such. 4. That upon all the testimony, in view of all the facts and circumstances surrounding the plaintiff's journey to New York and return, the trunk and its contents were not necessary or material for the use, comfort, or convenience of the plaintiff on such journey. That upon such testimony, facts, and circumstances, it was not necessary or important that the plaintiff should purchase for his use, convenience, or comfort, on said journey, the articles alleged to be lost. The motion for nonsuit was denied, and the defendant's counsel duly excepted. The defendant's counsel then requested the judge to charge upon twenty-one different propositions as there specified, making such request apply to the several items unpaid in the plaintiff's account of the contents of the trunk, and also ask the Court to submit various specific questions to the jury and require an answer thereto separately; all of which requests were refused by the circuit judge, and the defendant's counsel duly excepted.

The Court thereupon directed a verdict for the plaintiff for the value of the trunk and contents, 304.10 dols., to which direction the defendant's counsel duly excepted. The exception was ordered to be heard in the first instance at the General Term, when a motion for a new trial was made and denied and judgment ordered upon the verdict, from which the defendant then appealed to this Court.

Oliver Porter, for the appellant.

Milo Goodrich, for the respondents.

E. DARWIN SMITH, J.—The points made upon the motion for a nonsuit present the true theory of the defence, and present for discussion and consideration the true principles upon which the right of action of the plaintiff depends. The requests to charge, and the proposition submitted to the circuit judge, are simply reiterations in a different form, quite needlessly made, of the same points or questions. It is not denied and cannot be, in view of the numerous decisions on the subject in this State and in others, that the defendants, as carriers of passengers, are responsible for the carriage and safe delivery of such baggage as by custom and usage is ordinarily carried by travellers, and that the payment of the usual fare includes, in contemplation of law, a compensation for the conveyance of such baggage (Edwards on Bailment, 580; Story on Bailment, 499; *Orange County Bank* v. *Brown*, 9 Wend. 114; *Pardee* v. *Drew*, 25 Wend. 460; *Powell* v. *Myers*, 26 Wend. 591; *Merrill* v. *Grinnell*, 30 N. Y. 594).

The difficulty is not with the rule of law, but with its particular application to the facts of the case.

It is for the obvious interest of the carriers of passengers to encourage travel by allowing the passenger to take with him as baggage whatever he may deem proper or desire for his necessity, comfort, convenience, pleasure, or amusement on the journey or on his stay away from his home, within reasonable limits.

The question, as held in *Merrill* v. *Grinnell*, where property lost by a traveller is claimed as baggage, is whether it is or was a reasonable description or class and amount of baggage, in view of the condition in life of the passenger, the extent and object of his journey, the time of his contemplated absence from his home, and other particular circumstances of the case. The error, I think, in the argument of the defendant's counsel as presented at the trial on his motion for a nonsuit, and in his numerous requests, is in the claim that the baggage which a traveller may take, and the carrier must safely transport and deliver, is limited to such apparel or other articles as "were ab-

solutely" necessary or material for his use, comfort, or convenience on his journey, or while away from his home. In this case, the plaintiff's husband was away from home without a trunk or any articles of wearing apparel, so far as we can see from the evidence, except such as he had upon his person. The trunk and apparel, for which the action was brought, were purchased in the city of New York to take with him on his return home. He probably did not need or intend to use any portion of it by the way. He left New York at six o'clock p.m., and arrived at his home in Cortland the next morning or forenoon.

The argument of the counsel in effect is that, having no occasion for the use of the clothing or other articles contained in the said trunk on the way, he had no right to carry them as baggage at the risk of the carrier, or any baggage. Such a rule would, I think, be too strict and narrow for these times, when steamboats and railroads have so wonderfully increased the temptations and facilities for travel, and superseded the old modes of transportation by stage-coaches, canal and river-boats, and other means of transportation from place to place formerly in use.

It would be a more fair rule to hold the carrier responsible for whatever he received as baggage from the traveller within such limits as to weight and amount as the carrier may fix and prescribe. Public carriers and the Courts, I think, have been growing more liberal on this subject of the late than formerly. The case of *Merrill* v. *Grinnell* indicates the growth of a spirit of progress and expansion on this subject corresponding with the great increase of travel and intercommunication among the people in modern times.

In this case, the assignee of the plaintiff and the owner of the trunk for whose loss, with its contents, the action was brought, was allowed to recover for many articles of clothing, besides money, that the passenger did not need to use by the way. He was an emigrant from Germany to New York, and purchased his ticket at Hamburg for the transportation of himself and baggage to New York via Hull and Liverpool; his baggage consisting of a black leather trunk and its contents, consisting of a large amount of wearing apparel, among which were six dozen shirts, two swords, valued at 68 dols. 800 dols. in gold, and other articles, valued in all at 1,991,27 dols. This Court allowed the plaintiff to recover for all these articles. The chief controversy related to the money. It is quite apparent that of these materials of wearing apparel very few, and of the money very little, if any, were requisite for the use of the passenger by the way. His ticket for transportation was paid for at Hamburg before he started, and it does not appear that he sought or had occasion to open or to take anything from his trunk before his arrival in New York, where upon demand for it it was found to have been stolen or lost.

This case, I think, clearly establishes that the right of the traveller to recover of the carrier for lost baggage is not limited to such apparel or other articles as he expected to use or needed by the way. I think a young man, for instance, may start from his Eastern home to remove to and take up his residence in a Western State or city and take with him his ordinary wearing apparel, though he might not need or expect to use a single article of it by the way except such as he wore upon his person; and I cannot admit that it would be a sound rule of law to hold that, if a gentleman from the interior of the State or country should purchase in New York or in any other city a new coat or a new suit of clothes for his own use and put it into his trunk, he could not recover of the carrier for its loss, because he did not expect to stop to wear it or to put it on by the way. With the exception of the few articles purchased for his wife and other members of his family, the contents of the trunk in controversy in this action consisted of articles of male attire suitable for the condition of the plaintiff's husband, and purchased and designed, as he testified, for his immediate personal use.

The case is not one where there was any fraud practised or intended upon the carrier, or any implied misrepresentation that the articles were apparel or clothing, when in fact they were merchandise, as in the case of *Purdee* v. *Drew* (25 Wend. 460). In that case the plaintiff was a merchant, residing at Delhi, in the county of Delaware. He put on board the defendant's steamboat in New York a trunk to be transported to Catskill, and took passage himself at the same time to accompany the trunk home, where he would doubtless, in the ordinary course of travel, arrive on the same day. The trunk was filled with silks and other fine goods of the value of about 300 dols., purchased for sale, and contained nothing else. The plaintiff recovered for the value of the trunk and its contents at the Circuit, and the Supreme Courts set aside the verdict and granted a new trial, on the ground that the trunk was filled with *merchandise*. Chief Justice Nelson said the trunk did not contain an article for the personal convenience of the traveller; "that the contents of the trunk had no necessary connection with the baggage which it is customary to allow passengers to carry for a journey."

He said, also, "that the representation of the trunk and the contents as baggage, in the customary sense, was unfair, and calculated to impose upon the captain, which of itself would exonerate the defendants." This is the true ground on which the carrier is exempt from liability in such cases. The implication, upon the facts of this case, is that if the trunk contained the customary baggage, that is, clothing and articles designed for personal use of plaintiff and his family, he would have been entitled to recover, although the trunk was purchased in New York and simply transported to the plaintiff's home with him on his return home. This case is put upon the express ground that the contents were merchandise and not personal baggage. It virtually admitted that if the trunk had contained such baggage as is customarily taken by travellers the defendant would be liable. And in that case, it is quite apparent that if the trunk had been then filled with wearing apparel, the plaintiff could hardly be expected to use or need it on his way home. It would have been taken for use after his return to his home. The rights of the traveller in respect to his baggage cannot, I think, properly rest upon a rule so restricted as claimed by the defendant; one which would operate so harshly and unreasonably upon the travelling public. If the plaintiff's husband had taken his trunk and its contents with him when he left home, it could scarcely be pretended that he was not entitled to take it home with him from New York as personal baggage at the risk of the carrier. I think he was entitled to equal protection for it on his journey homeward from New York. No fraud was perpetrated or designed upon the railroad company. The trunk was of such description with its contents as was customarily taken and carried unquestioned by all travellers. There was really no dispute about the facts at the Circuit, and the direction of the circuit judge to the jury to render a verdict for the plaintiff was therefore not erroneous, and the judgment at the General Term should be affirmed.

But a majority of the brethren think that the dress purchased by the deceased for his landlady at the cost of seven dollars should not have been embraced in the verdict, and that the plaintiff was not entitled to recover for that sum. The judgment should therefore be modified by striking out the said sum of seven dollars, and the interest thereon from the date of the verdict be deducted therefrom; and for the residue, the judgment should be affirmed.

Judgment so modified and affirmed, with costs.

LOTT, J. (dissenting).—It appears by the evidence of the plaintiff's intestate that the different articles claimed as baggage (including some female wearing apparel) were purchased in the city of New York by the plaintiff's intestate for use after he reached his home in Cortland county, and were not intended to be used on his journey. They did not, in my opinion, constitute baggage within the meaning of that term as applicable to a passenger over the defendant's road. Webster's definition comprehends all that can properly be included in it. He defines it to be "the clothing and other conveniences which a traveller carries with him on a journey." It cannot extend to articles which were not intended to be used until the journey was terminated, having no connection with or reference whatever to his personal comfort, convenience, and enjoyment as a passenger during the journey.

If, however, I am mistaken in that construction, I can see no ground for holding that wearing apparel or articles purchased for his wife or girl in his family, much less for his "landlady," neither of whom accompanied him on his journey, constituted a part of *his* personal baggage, and the Court erred in permitting a recovery therefor. The judgment must be reversed and a new trial ordered, costs to abide the event.

For affirmance, as modified, SMITH, GROVER, FOSTER, and INGALLS, JJ., and EARL, C.J.

For affirmance without modification, SUTHERLAND, J.
For reversal, LOTT, J.
HUNT, J., concurred with LOTT, J., as to the cloth for dresses.
Judgment affirmed as amended.
From the New York Daily Transcript.

SOCIETIES AND INSTITUTIONS.

SOLICITORS' BENEVOLENT ASSOCIATION.

The usual monthly meeting of the board of directors of this association was held at the Law Institution, Chancery-lane, London, on Wednesday, the 4th inst., Mr. Park Nelson in the chair. The other directors present were Messrs. Rickman, Shaen, Smith, Torr, and Young (Mr. Eiffe, Secretary). A donation of £25 was granted to the widow of a member of the association, and a sum of £30 was distributed in relief of the widows and families of deceased non-members. Three new members were admitted to the association, and other general business transacted.

OBITUARY.

MR. J. W. JEFFERSON.

Mr. James William Jefferson, solicitor, of Pontefract, Yorkshire, died at that place on the 18th December, at the early age of thirty-one years. He was the son of the late Mr. Edward Jefferson, for many years a solicitor of Pontefract, and was certificated in 1860.

MR. W. BRANDT.

Mr. William Brandt, M.A., barrister-at-law, died on the 26th December, at his chambers in King's Bench-walk, Temple, in the forty-first year of his age. He was the second son of the late Robert Brandt, Esq., who was formerly judge of the Manchester County Court, and was educated at Oriel College, Oxford, where he graduated B.A. in 1853. He was called to the bar at the Inner Temple in January, 1856, and was a member of the Northern Circuit, attending also the Bolton, Manchester, and Kirkdale sessions.

MR. T. H. AYCKBOURN.

Mr. T. H. Ayckbourn, barrister-at-law, died at his residence, Albany-road, Camberwell, on the 31st December, at the advanced age of ninety-four years. He was called to the Bar at the Middle Temple, in February, 1829, and was he author of "Ayckbourn's Chancery Practice."

MR. T. H. HALL.

Mr. Thomas Henry Hall, barrister-at-law, died at his residence, Norfolk-crescent, Hyde Park, on the 24th of December last, in the seventy-fifth year of his age. Mr. Hall went to Eton and thence to King's College, Cambridge. He was Browne's Medallist in 1818 and 1819, and took his B.A. degree in 1821. He was for many years a fellow of his college, and was called to the Bar at Lincoln's-inn in November, 1824. Mr. Hall practised for five years as an equity draughtsman and conveyancer, but latterly retired from practice. He was a fellow of the Royal Society, and was Provincial Grand Master of the Freemasons of Cambridgeshire for the last quarter of a century.

Lord Walsingham died by his own hand on the 31st December. His lordship was called to the bar at Lincoln's-inn in 1827, and was the great-grandson of the first baron, who previous to his elevation to the peerage was known as Sir William De Grey, a lawyer of eminence, who became Solicitor-General in 1763, Attorney-General in 1766, and was elevated to the bench on the 26th January, 1771, as Chief Justice of the Court of Common Pleas. Sir William resigned his judicial office on the 8th June, 1780, and was elevated to the peerage in the following October, by the title of Baron Walsingham, of Walsingham, in the county of Norfolk. The second Lord Walsingham filled for twenty years the office of chairman of committees of the House of Lords, from which he retired in 1814. The third Lord Walsingham, with his wife, Lady Walsingham, was burnt to death, at his house in Harley-street, in April 1831.

LAW STUDENTS' JOURNAL.

INCORPORATED LAW SOCIETY.

PRELIMINARY EXAMINATIONS.

The Preliminary Examination in General Knowledge will take place on the 10th and 11th of May, and will comprise—

1. Reading aloud a passage from some English author.
2. Writing from dictation.
3. English Grammar.
4. Writing a short English composition.
5. Arithmetic—A competent knowledge of the first four rules, simple and compound.
6. Geography of Europe and of the British Isles.
7. History—Questions on English History.
8. Latin—Elementary knowledge of Latin.
9. 1. Latin. 2. Greek, Ancient or Modern. 3. French. 4. German. 5. Spanish. 6. Italian.

The Special Examiners have selected the following books, in which candidates will be examined in the subjects numbered 9 at the Examination on the 10th and 11th May, 1871:—

In Latin . . .	Livy, Book I.; or Virgil, Æneid, Book I.
In Greek . . .	Xenophon, Anabasis, Book I.
In Modern Greek	Βυντσῆς Ἱστορία τῆς Ἀμερικῆς βιβλίον ζ'.
In French . . .	Lamartine, Christophe Colomb; or, Racine, Britannicus.
In German . . .	Göethe, Egmont; or, Schiller, Don Carlos, Acts I. and II.
In Spanish . . .	Cervantes, Don Quixote, cap. xv. to xxx., both inclusive; or Moratin, El Sí de las Ninas.
In Italian . . .	Manzoni's I Promessi Sposi, cap. i. to viii., both inclusive; or Tasso's Gerusalemme, 4, 5, and 6 cantos; and Volpe's Eton Italian Grammar.

With reference to the subjects numbered 9, each candidate will be examined in one language only, according to his selection. Candidates will have the choice of either of the above-mentioned works.

The examinations will be held at the Incorporated Law Society's Hall, and at some of the following Towns:—Birmingham, Brighton, Bristol, Cambridge, Cardiff, Carlisle, Carmarthen, Chester, Durham, Exeter, Lancaster, Leeds, Lincoln, Liverpool, Maidstone, Manchester, Newcastle-on-Tyne, Oxford, Plymouth, Salisbury, Shrewsbury, Swansea, Worcester, York.

Candidates are required by the Judges' Orders to give one calendar month's notice to the Incorporated Law Society before the day appointed for the examination, of the language in which they propose to be examined, the place at which they wish to be examined, and their age and place of education. All notices should be addressed to the Secretary of the Incorporated Law Society, Chancery-lane, W.C.

In consequence of indisposition, Mr. Fitzroy Kelly will not deliver his lecture on the 13th, or hold his classes on the 16th, 17th, and 18th.

THE NEW COURTS OF JUSTICE.—The tenders for the foundation of the New Courts of Justice were to have been delivered to-day (Dec. 31). About 25 of the leading contractors of London were applied to, but the conditions put before them were found so inequitable that the competitors unanimously agreed not to tender till these conditions should be modified in an equitable spirit. In some disputed cases that have lately come before the Judges they have expressed their strong sense of surprise that builders could be found willing to sign such one-sided contracts as many of them have been accustomed to do, and their disapprobation of those who put out such contracts. The Institute of Architects have fully considered the question and have agreed with the London builders as to what is fair and equitable, but up to the present moment the Office of Works is insisting on conditions which the Judges in a late case (*Jones* v. *St. John's College*, see the *Times* November 18), condemned as one sided and improper. The competitors have solicited a conference with Mr. Ayrton on these points, feeling every confidence that he will be willing to listen to reason in the matter. They have considered that there would be no use in sending in their tenders till this matter be arranged, as in point of fact by so doing they would be binding themselves to the conditions. So the matter rests for the present.—*Times*.

COURT PAPERS.

QUEEN'S BENCH.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. Sir A. E. COCKBURN, Bart., Lord Chief Justice of her Majesty's Court of Queen's Bench, in and after Hilary Term, 1871.

IN TERM.

Middlesex.

Thursday	Jan. 12	Tuesday	Jan. 24
Tuesday	,, 17		

There will not be any sittings during term in London.

AFTER TERM.

Middlesex.		London.	
Wednesday	Feb. 1	Wednesday	Feb. 15

COMMON PLEAS.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. Sir WILLIAM BOVILL, Knt., Lord Chief Justice of her Majesty's Court of Common Pleas, at Westminster, in and after Hilary Term, 1871.

IN TERM.

Middlesex.

Thursday	Jan. 12	Wednesday	Jan. 25
Wednesday	,, 18		

The Court will not sit in London during term.

AFTER TERM.

Middlesex.		London.	
Wednesday	Feb. 1	Tuesday	Feb. 14

EXCHEQUER OF PLEAS.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. Sir FITZ-ROY KELLY, Knt., Lord Chief Baron of her Majesty's Court of Exchequer, in and after Hilary Term, 1871.

IN TERM.

Middlesex.

Thursday	Jan. 12	Tuesday	Jan. 24
Tuesday	,, 17		

The Court will not sit in London during term.

AFTER TERM.

Middlesex.		London.	
Wednesday	Feb. 1	Wednesday	Feb. 15

EXCHEQUER CHAMBER.

This Court will sit on the 12th inst., at ten o'clock.

COURT OF CRIMINAL APPEAL.

This Court will sit on the 21st inst., at ten o'clock.

JUDICIAL SALARIES.—It is hardly necessary for us to say that we sincerely regret the failure of the measure to increase the salaries of the Supreme Court judges. It was a moderate enough proposal that the Chief Justice should have ten thousand, and the associates eight thousand, a year. The argument in its favour was a very simple one—that the present salaries, however well adapted to the necessities of fifty years ago, are not enough at a period in which expenses are three or four times as great as then. Of course the honour of the position is worth something, but that is always a constant element in the calculation, and is not greater now than when Marshall sat upon the bench. There is no argument whatever on the other side that we know of, except the Simplicity-of-Republican-Institutions argument, and the undoubted fact that judges can be got for "half the money." Not only is this true, but it would be true whatever the salaries were. So also you could obtain plenty of gentlemen to act as President of the United States for a mere song, but they would not reflect much credit upon the office. The only way in which good judges can be obtained is by increasing the natural attractions of the position by a sum sufficient to live upon. Ten thousand a year is not a large income for men who live in cities during the greater part of the year. Until we pay our judges at least that sum, lawyers with a large and lucrative practice will not go upon the bench. All this is trite: every lawyer of intelligence will at once admit the truth of it. The fact to which we wish to call attention is that Congress declines to pass the bill. The simplicity of our representatives far surpasses that of our institutions.—*American Law Review.*

THE JUNIOR BAR IN AUSTRALIA.

Perhaps no trials since the foundation of this colony have excited so much public and professional interest as those of Gerald Henry Supple, for his attempt on the life of George Paton Smith, which was attended with the loss of John Sesnan Walshe's life. Supple was, for some reason which it is difficult to understand, first arraigned for causing the death of the latter, and, after a most protracted trial, found guilty and condemned to death. Some law points were, however, reserved for the consideration of the full Court, and, after argument, disallowed by it. The prisoner lay cast for death in the condemned cell, and at the last moment was reprieved by the Executive Council, swayed by the pressure of popular feeling, in order that the opinion of the Privy Council might be taken on his case. The law officers of the Crown then saw fit to institute proceedings against him for wounding George Paton Smith with intent to kill, a course which should have been taken at first. It was at this stage that the case assumed an aspect of still greater strangeness than it had yet borne. On Monday, October 24, the prisoner was brought into court to stand his trial, and was on the point of being placed in the dock, when, to the surprise of all present, a gentleman rose in his place at the bar table and addressed the Court. He was, if not the junior, at least one of the most recently called of all the member of the Victorian bar. He was not retained or instructed on behalf of the prisoner not yet at the bar, but was at some pains to inform the presiding judge that he appeared as *amicus curiæ*, in order to point out before his Honour proceeded with the trial of Supple that the Court ought not to do so. Supple, he said, has been already tried for a capital felony, the murder of Walshe, and was under sentence of death for that offence. He cited a case reported in Russell & Ryan, p. 268, the marginal note in which ran to the effect that "a man upon whom sentence of death has been passed ought not while under that sentence be brought up to receive judgment for another felony, although he was under that sentence when he was tried for the other felony and did not plead his prior attainder." As a member of the bar he felt it his duty to bring the matter before the Court, as, although he was not instructed, it was the duty of counsel to see that the proceedings were regular. This proceeding on his part seemed to take the counsel for prosecution by surprise, when the presiding judge very properly said the case was now in the hands of the Crown. The Crown prosecutor asked for an adjournment for an hour, and, at the expiration of that period, came into court and said that he had in vain attempted to see and consult with the Attorney-General, and had therefore to suggest that the trial should be postponed until Thursday. This was accordingly done, and on Thursday, after a preliminary interruption on the part of the above-mentioned junior, the prisoner was tried, and the jury, being unable to agree as to their verdict, were discharged.

We do not intend in our present remarks to enter into any discussion on the question as to whether the proceedings of the law officers of the Crown were good or bad in law. Our object is rather to point out what an alarming state of affairs in judicial matters must ensue if on a trial every junior is to be allowed to inflict his reading of the law upon the Court. Scarcely any trial takes place which does not elicit a direct conflict of opinion amongst the occupants of the back benches. The assumption of the office of *amicus curiæ* is of rare occurrence even amongst the senior and more experienced members of the bar, and it must be under exceptional circumstances indeed that a barrister of a few months' standing would dare to interrupt the proceedings of a Court of justice on the responsibility of his own judgment. Should he do so, and on argument sustain his objections, his interference may be looked upon as a short cut to fortune, and himself as a made man in his profession. It is a case in which success is glorious, and failure contemptible.

But turning from such extemporaneous interference with the course of justice, so far as it affects the objector, we may now consider its more important effects upon the prisoner and the Court itself. The prisoner was not even arraigned, and therefore any point taken, even if a good one, would not have affected his case. His life was set upon the hazard of the trial, and his defence had been deliberated upon for months. He was fortunate enough, at each trial, to have the services of the most eminent men

in the colony at his command; and on the last occasion had, after due consideration, determined on defending himself. His line of defence had doubtless been sketched out in consultation with his legal advisers, and every care had been taken in its preparation. Yet, to his astonishment and alarm, at the last moment an unknown advocate thrust himself unexpectedly into the case, whose very appearance and name were unfamiliar to him. He had deliberately refused the services of the most eminent advocate in Victoria to act as his mouthpiece, and suddenly found the place usurped by a stranger.. His life was at stake, and he was prepared to defend it, but found it, according to his view, imperilled by one in whom he could not possibly have any confidence. The situation was one full of painful uneasiness for the prisoner, and embarrassment to the judge and the Court generally. The objector, as a junior, should at least have submitted his point to the experienced and learned counsel who had signified his willingness to undertake the defence of the prisoner, and, if a good one, have left it to that gentleman to use it at his discretion, and not have rushed into the responsible position of adviser of the Court after such an irregular fashion. At the commencement of the adjourned trial, he again interrupted the proceedings by a statement to the Court that his former remarks had been misreported by the press, and that counsel ought to have been assigned to the prisoner; but nothing followed, on his Honour's intimation that these matters were beyond his control.

In conclusion it is difficult to understand what there was in the circumstances we have endeavoured to relate, to cause the presiding judge more than a momentary doubt as to his course of action. Why was any consultation with the Attorney-General necessary, in his opinion? Surely a case of such serious importance was not brought haphazard into court, to be delayed by so frivolous an objection as that urged by the prisoner's self-constituted champion. Nothing that the Attorney-General could say would affect the law, and both the judge and the Crown prosecutor were of opinion that the trial might proceed in law. But the Crown prosecutor asked for a postponment in order that he might consult with the Attorney-General as to the propriety of proceeding with it. It seems to us it was somewhat late to discuss this question. The prisoner had been brought there to be tried for an offence against the law, and the judge and Crown prosecutor were both of opinion that he was legally there. What need then for a consultation between the Attorney-General and the counsel for the prosecution as to the propriety of a course which had been deliberately adopted by them.—*Australian Jurist.*

INVESTMENTS.

The *Financier* has an article upon investments. The average Railway and Foreign Stocks have, it is stated, paid during the past ten years some two per cent. per annum more in dividend than Consols during that period; and while there has been some slight decline in the market value of the principal of Consols at the end of the ten years, on the other securities there has been a general increase in value. Turkish securities have paid remarkably well, and Spanish but badly. £1,000 invested in Consols in 1860 would have purchased £1,075 stock; the ten years must have produced £322 in dividends, and the present market value of the principal would be £994. Upon closing the account the ten years' profit would be £316, or at the rate of £3 3s. 2d. per cent. per annum. With regard to taking the general average, while Railway Ordinary Stocks have paid quite 6½ per cent. per annum to the ten years' holder, the Preference Stocks have yielded but little over two per cent. In this calculation are included the gain in the market value of the principal on the former, and the loss in the same on the latter. During the ten years Railway Preference Stocks have fallen about three per cent. in market price. This may be, in some measure, a result of the increased attention which is paid to the Ordinary Stocks. It would appear that £1,000 invested in London and North-Western Ordinary Stock in 1860 would have been increased, at the present date, to £1,842 16s.—an amount composed of £562 16s. of dividends received, and £1,280 the present market value of the principal. This is equal to a return of nearly 8½ per cent. per annum for the ten years. By a similar method of calculation the £1,000 invested ten years ago in the same company's Preference Stock would have increased to only £1,385 10s.—the ten years' return being thus only 3⅞ per cent. per annum. Midland Railway Ordinary Stock has paid for the ten years just over 4¼ per cent. per annum upon present realisation; and the Six per cent. Preference Stock about £4 3s. 9d. per cent. per annum. Great Northern Ordinary Stock has paid the investor of ten years' standing, reckoning both interest and principal, 7 per cent. per annum; while the Preference Stock has yielded only the equivalent of 4½ per cent. per annum. The conclusion of the *Financier* is that, if a sound and improving security is wanted, there is more scope and more profit in selecting for steady investment an "Ordinary" than a "Preference" Stock. The fixed annual returns of the latter, though substantial and sure, are being gradually outstripped by the rise in the dividends of the "Ordinary" Stocks.

The *New York Times* gives the following account of the manner in which all business connected with the Erie Ring is always decided by Judge Barnard or Judge Cardozo:—"When such a suit as the Fisk and Vanderbilt, or the Fisk and Ramsey case, is called for trial before any Court over which either of these judges presides, he adopts the theory that he thereby acquires a special property in it amounting to a lien, and henceforth he and that case are inseparable. If the reasons for adjournment are such as cannot be disregarded, the adjournment is granted, but only on condition that the case shall, on the adjourned day, be heard before the same judge. He will proceed with a trial as far as it is deemed advisable, and then adjourn the whole matter to a future day, but only to be heard before him, and thus will keep the case dangling just as long as he thinks proper, or as suits the convenience of the party in whom he may feel interested. If such matters come up before a judge known to be honest and impartial, a witness is suddenly taken sick, one of the numerous Ring counsel is otherwise engaged, or, if all these schemes prove unavailing, the lawyers of the Ring let the case go by default, and then, when one of the judges owned by them is at chambers, apply before him to have the default opened and the case set down for trial. Of course it is unnecessary to say that the default is opened and the case set down for a day when the right (who in these cases is the wrong) judge will preside at the court in which it is set down for trial. Judge Barnard or Cardozo hears and decides all cases in which the Erie Ring are interested or by which they have anything to gain, and enable Fisk to make good his recent boast to Maretzek 'that if he wished redress the courts were open to him.'"

The counsel for Messrs. Henry L. Raphael, Robert A. Heath, and others, the English stockholders of the Erie Railway Company, have filed their answer against the complaint of the Erie directors, Fisk, jun., and Justin D. White. The answer, which is very voluminous, denies the allegations made in the complaint. It charges that the election, in the fall of 1867, for directors of the Erie Company, was not accomplished by a fair vote of *bonâ fide* shareholders, actuated by a design for the benefit of the company and of the shareholders, and that it was effected by a conspiracy and combination, the chief movers to which were John T. Eldridge, president of the Boston, Hartford, and Erie Railroad, Fisk, jun., Jay Gould, and Frederick A. Lane. It alleges that the latter desired to obtain control for the purpose of committing the company to certain engagements of very large amounts in aid of the Boston, Hartford, and Erie line, a speculative enterprise of very hazardous and questionable character, in which the above parties, particularly Eldridge, were largely interested. The answer makes mention of a belief that the election was conducted to some extent by the purchase of "proxies" for voting, and by the aid of 70,000 dols. contributed by the Boston and Hartford Company. It asserts that the immediate object of the combinators was effected by the using of 500,000 dols. worth of Boston, Hartford, and Erie Railroad Bonds, which were put into circulation in the name of the Erie Company, and also claims that the bonds fell in value on account of the discreditable operations of the directors.

SENTENCES OF PRISONERS.—Yesterday (Jan. 3), at the Gloucestershire Quarter Sessions, Mr. Borwick Baker renewed a discussion as to a general principal in sentencing prisoners

on summary conviction. He was warmly thanked for his well-known labours in this and like matters, and, after a long discussion, the Court unanimously adopted a set of suggestions he had drawn up, recognising the expediency of a general rule as to sentences for felony which, while making allowance for exceptional cases, might secure a uniformity of practice intelligible to the public and deterrent to those likely to fall into crime. One suggestion is that in the case of a prisoner charged with felony the police shall seek to ascertain his history during the previous five years, and that if no antecedents can be shown he shall, as a rule, be committed for trial; another, that a man not previously convicted shall receive a light sentence; another, that, save in exceptional cases, a man convicted twice of felony shall not have less than six months' imprisonment and seven years' police supervision; another, that seven years' penal servitude shall be awarded on a third conviction, and so on. Mr. Baker gave his opinion that gradually these rules of practice would pervade the country.—*Times.*

DEATH OF DR. BERGER, OF VIENNA.—Dr. Berger, one of the most eminent members of the Viennese Bar, has just died at Vienna, after a lengthened and painful illness. Johann Nepomuc Berger was born at Prossnitz, in Moravia, in 1816. He studied at Olmutz and Vienna, and obtained in 1840 the degree of Doctor of Laws. In 1848 he was a member of the National Assembly of Frankfort, where he sat with the Left, and greatly distinguished himself as an orator. In 1849 he returned to Vienna, and at once took up the foremost rank amongst the most noted advocates there. He was not only at the head of the Progressionist party, but the most brilliant parliamentary orator and the most patriotic and popular man of New Austria. The journals of Vienna consecrate their first columns to his memory, and his death is looked upon in Vienna as a public misfortune. He has written several books, the chief ones of which are—"Ueber das Pressgesetz, 1848" (on the Law of the Press), and "Oestreichisches Wechselrecht, 1850" (the Austrian Laws of Exchange).—*Daily Paper.*

THE HON MRS. YELVERTON.—The Hon. Mrs. Yelverton—Lady Avonmore—in a note to the editor of the *San Francisco Bulletin*, briefly defines her position, which a few of the American papers have somewhat misrepresented. Her case, she states, has been through 18 different trials—the Scotch and Irish Benches each declaring in her favour. In the trial in England the marriage issue was never decided, she having been non-suited on the ground of no jurisdiction. Upon another occasion, the House of Lords, having a conjoint action before them, refused on the one hand the petition of Major Yelverton to be declared free of marriage with her, and on the other pronounced a judgment of "non-proven" against her marriage with him. This singular decision took the legal profession by surprise. It was the acme of mystification of the Scotch law of marriage. Major Yelverton was not freed, but she was not bound! Fortunately their real status did not depend upon the Scotch marriage, the Irish one having been finally proved in 1862, since which time the continuation of the various suits has only been litigious and vexatious, as a Scotch Court could never interfere with an Irish marriage, and the litigation was intended merely to stave off criminal proceedings for bigamy in Scotland. They were not married a third time in England, otherwise, she presumes, there might be a third claimant for dower on the Avonmore estate.—*Daily Telegraph.*

The education of the Roman youth was, under the republic, deemed incomplete until he committed to heart, and thoroughly understood, the twelve tables constituting the fundamental law of his country. The individuals who control our public school system deem a knowledge of the law of the land of so little use that its principles are not, even in a remote manner, brought to the notice of the school children of to-day. Reading and writing imperfectly acquired, with a dim and hazy comprehension of arithmetic and geography, make up the fundamental culture gained in the common schools, and the scheme of education is rendered complete by an accurate understanding of that least practical of all abstract sciences, English grammar. That our public school system has many excellent features cannot be denied, but its main object seems to have been lost sight of. That object is not to produce great linguists or men cultivated in literature or profound in science, but to so train the citizen that he may better perform the duties appertaining to his citizenship. Without neglecting those fundamental acquirements which are necessary conditions of all knowledge, the educational scheme of a common school should make provision for a study of the laws of the society within which it has its existence, and not, while pretending to impart to its pupils all necessary knowledge, keep them wholly ignorant of their duties and their rights as members of that society.—*Albany Law Journal.*

POSTAL TELEGRAPHS.—Mr. Scudamore reports that the total number of messages forwarded from postal telegraph stations in the United Kingdom during last week was 144,041, being a decrease on the previous week of 35,411. This great decrease is due to the observance of the Christmas holidays.

PUBLIC COMPANIES.

GOVERNMENT FUNDS.

LAST QUOTATION, Jan. 6, 1871.

From the Official List of the actual business transacted.

3 per Cent. Consols, 92¼	Annuities, April, '85
Ditto for Account, Feb. 2, 92¼	Do. (Red Sea T.) Aug. 1908
3 per Cent. Reduced 92	Ex Bills, £1000, — per Ct. 10 p m
New 3 per Cent., 92	Ditto, £500, Do — 10 p m
Do. 3½ per Cent., Jan. '94	Ditto, £100 & £200, — 10 p m
Do. 2½ per Cent., Jan. '94	Bank of England Stock, 4½ per Ct. (last half-year) 233
Do. 5 per Cent., Jan. '73	Ditto for Account.
Annuities, Jan. '80 —	

INDIAN GOVERNMENT SECURITIES.

India Stk., 10½ p Ct. Apr. '74, 209	Ind. Enf. Pr., 5 p C., Jan. '74 100
Ditto for Account	Ditto, 5½ per Cent., May, '79 106
Ditto 5 per Cent., July, '80 114	Ditto Debentures, per Cent., April, '64 —
Ditto for Account, —	Do. Do, 5 per Cent., Aug. '73 103
Ditto 4 per Cent., Oct. '88 101	Do. Bonds, 4 per Ct., £1000 20 p m
Ditto, ditto, Certificates, —	Ditto, ditto, under £1000, 20 p m
Ditto Enfaced Ppr., 4 per Cent. 90	

RAILWAY STOCK.

Shrs.	Railways.	Paid.	Closing prices.
Stock	Bristol and Exeter	100	90
Stock	Caledonian	100	87
Stock	Glasgow and South-Western	100	117
Stock	Great Eastern Ordinary Stock	100	35½
Stock	Do., East Anglian Stock, No. 2	100	7
Stock	Great Northern	100	125
Stock	Do., A Stock*	100	136
Stock	Great Southern and Western of Ireland	100	100
Stock	Great Western—Original	100	72½
Stock	Lancashire and Yorkshire	100	135
Stock	London, Brighton, and South Coast	100	41½
Stock	London, Chatham, and Dover	100	14½
Stock	London and North-Western	100	129½
Stock	London and South-Western	100	91
Stock	Manchester, Sheffield, and Lincoln	100	45
Stock	Metropolitan	100	64
Stock	Midland	100	123½
Stock	Do., Birmingham and Derby	100	100
Stock	North British	100	34½
Stock	North London	100	116
Stock	North Staffordshire	100	61½
Stock	South Devon	100	49
Stock	South-Eastern	100	76½
Stock	Taff Vale	100	165

* A receives no dividend until 6 per cent. has been paid to B.

INSURANCE COMPANIES.

No. of shares	Dividend per annum	Names.	Shares.	Paid.	Price per share.
			£	£ s. d.	£ s. d.
5000	8 pc & bs	Clerical, Med. & Gen. Life	100	10 0 0	23 0 0
4000	40 pc & bs	County	100	10 0 0	85 0 0
34440	5 pc & bs	Eagle	50	5 0 0	6 0 0
10000	7½ 2s 6d pc	Equity and Law	100	6 0 0	7 11 3
20000	7½ 2s 6d pc	English & Scot. Law Life	50	3 10 0	5 0
2700	5 per cent	Equitable Reversionary...	105	...	95 0 0
4600	5 per cent	Do. New	50	30 0 0	45 0 0
5000	5 & 3 p sh b	Gresham Life	20	5 0 0	
20000	5 per cent	Guardian	100	30 0 0	32 10 0
20000	5 per cent	Home & Col. Ass., Limtd.	50	5 0 0	3 2 6
7500	10 per cent	Imperial Life	100	10 0 0	16 12 6
80000	12 per cent	Law Fire	100	2 10 0	3 2 6
10000	33½ pr cent	Law Life	100	83 17 6	89 12 6
00000	10 per cent	Law Union	10	0 10 0	0 17 6
20000	5l 17s 6d pc	Legal & General Life ...	50	8 0 0	9 0 0
20000	4l 12s 6d pc	London & Provincial Law	50	4 17 8	4 11 3
40000	16 per cent	North Brit. & Mercantile	50	6 5 0	23 3
2500	12½ & bns	Provident Life	100	10 0 0	34 10 0
89220	20 per cent	Royal Exchange... ...	Stock	All	£318

MONEY MARKET AND CITY INTELLIGENCE.

Anticipations of peace have occasioned a rise in prices this week, but the actual amount of sales and purchases made still continues to be extremely small. The home Railway Stocks have made a considerable advance this week, and a very noticeable feature at the present moment is the high prices at which the inferior descriptions are quoted. The Guaranteed Indian Railway Stocks have only partially recovered from the fall which they suffered at the publication of the Russian note.

RELATIONS OF JUDGE-MADE LAW TO A CODE.

The separation of the judicial from the legislative seems to be a technical and unnatural division of jural labour. Why should not a judge be presumably the best legislator? A good marksman, indeed, may not be the most expert at founding cannon. But the legislative art implies dexterity in applying rules of law; so that the analogy we have suggested does not hold good. A lawyer who has almost exclusively devoted himself to the arguing of cases in court is not likely to be a good legislator; not for the reason commonly supposed—viz., that he has been in the habit of considering, not what the law ought to be, but what it is. The causes that blunt a lawyer's philosophic perceptions are of a deeper location. He has been, as it were, counting the bricks in every case he argued before a bench or jury, instead of considering the philosophy and higher analogies of the legal principles involved. Like a spirit of another sphere, he has been regaling himself with the gross pleasures of the concrete, instead of regarding it merely as so much incense to the worth of the high intelligence which he represented.

The exclusion of judges from the Legislature and the arena of politics in England seems calculated to deprive the nation of the best practical light. Judges, even when they do not attend political meetings, are not the less politicians or partisans on that account. But they are less watched, and the stream of rabid or patriotic sentiment, which would flow brilliantly before the sun of public opinion, now filtrates and disturbs the arena of justice. It is unnecessary to cite cases where judicial politics have made themselves manifest in England in civil and criminal cases. Indeed, the excision of politics from the judicial mind is impossible. The only question is, whether, if allowed to give reasons at political meetings for the faith that is in him, he will not be more likely to select what is defensible, than when he is compelled to retire to the bench in the political garb and colours of his party, there fight for the cause in secret, and shelter his animosity under the pretext of law.

No man ought to be allowed to 'shirk his political functions, the leading one of which is to advise the nation upon all questions of public interest. If the judge is found *minus habens* upon matters respecting what all are competent to decide, there will be an easy test of determining the nature of his legal qualifications. Of all the advantages of popular government, the best is the rule which gives the people the appointment of judges. But to render this privilege thoroughly useful, it is necessary that the judges be allowed freely to participate in all the social and political discussions of the nation; otherwise the people will be called upon to hall-mark what they have no means of assaying. But the man found consistent in politics, and holding his opinions upon strong, though possibly not conclusive, grounds, may be safely trusted in the secret recesses and mysteries of the law.

The natural right of the judge, therefore, to mix in political and legislative debate, is certain. Indeed, the constitution of the British House of Lords, not only as a second legislative chamber, but also as the ultimate court of legal appeal, shows that the framers of the British constitution, or its exponents in early times, knew the value of judge-made rules, and that it is a judicial decision which is alone law. Therefore, to prevent a conflict between the judicial and the legislative, they both have a common *embouchure* in the House of Lords. The law lords alone, as a rule, decide a technical case, or, indeed, any case brought either from a court of law or equity. But the right of every peer to vote, if he wishes, is admitted by Hallam, although this privilege, doubtless, will become the subject of fierce debate, on the ground of its obsoleteness whenever it is sought to be revived.

It is not necessary, therefore, to look with Hallam, for the accidental causes to which the usage of the House of Lords to hear legal appeals owes its rise. This right is founded in the nature of things. In every state the highest legislative chamber (not the executive) should be the ultimate court of appeals. The Privy Council has not conformed always to decisions by the House of Lords. It seems unwise, therefore, to have both chambers of the Legislature appellate courts, lest they might differ, though there is no objection to a court composed of equal numbers from each House, with casting vote to the oldest member.

The right of the House of Lords to hear appeals from equity, as well as from law, thus rests upon the same grounds of natural reason, and, consequently, is not more clear in respect of the one class of appeals, as Hallam thinks, than it is as to the other. That writer is very fond of looking to accident for the origin of rights which are to be sought for in the human mind and in the principles of common sense. Where he does not find a stratum of historic fact and evidence to bear on an opinion, he at once pronounces it weak, as if every source and principle of the common law was known even to the most learned, or enumerated plainly in every case in which it was really acted upon.

As judges, then, are properly the ultimate judges of appeal, so, conversely and for the same purposes of harmony, the judges should be more largely entrusted than at present with the business of legislation, and for it they should be most highly remunerated. Austin, who considers that the technical work of legislation is more difficult than its ethical, should have no objections to the judicial infusion into our Legislature. Law, however, is not naturally or necessarily technical, although it never can be thoroughly and efficiently practised by a person who does not devote most of his time to its study. For what art, of however scientific or philosophical nature, can be cultivated with success, if the application to it be intermittent? Even poetry requires the most assiduous and almost exclusive attention.

The technical elements of law, then, may be wholly eliminated, especially as Latin terms and phrases are becoming obsolete. It was owing to the use of this terminology that law gained the reputation of being an occult and mysterious art. Indeed, law is not wholly a moral or abstract science. Being practical, it requires an observation of moral laws in that limited light which will exclude the consideration of duties of imperfect obligation. A judge is surely the best person to select and condense the jural rays for this purpose.

Law is so essentially deductive or scientific, that very few questions of difficulty arise under the common law. Sir Edward Coke observed this. Even in his time wills and statutes appeared the chief sources of income to lawyers. The learning of remainders certainly seems difficult. But it is not technical. Anyone acquainted with the important functions entrusted to the tenant to precipe would easily see that no question of perpetuity could arise under the common law. For as the objection does not apply to vested remainders, and as contingent remainders were in the power of the tenant to the precipe, it followed that he could destroy them. The decision in *Duncomb* v. *Wayfield*, which gave validity to the limitation to trustees to preserve contingent remainders, was as arbitrary as the judgment in *Taltareem's case*. The common law, then, provided for every purpose of commerce, while it eschewed litigation. The cause of this simplicity is to be found in the fact that the common law was a counterpart of the political system. But all natural and free systems of government are moral, and, therefore, so far understood by every person of average intelligence. The duties, therefore, imposed by the dual, political, and civil systems are known to all, and capable of being elucidated by natural and non-technical reasoning.

Judge-made rules are nothing more than rules of the common law and of common sense, with their practical applications. These rules would not have held their ground in the legal system only for their own intrinsic value, both as general and practical laws. This shows that the judicial mind cannot be inapt for legislation; not merely for that portion of it which is technical, but for that which is ethical. Fictions and equity are both classes of judge-made rules. Codification is legislative proceeding on the experience and light afforded by fictions and equity, and rendering the principles thus acted upon harmonious and expansive, so as to constitute a new alternal foundation for a legal system, beyond which it is not necessary to look. Codification is, in short, a collection of legal issues settled by the judges, not of one age, but of every era whose decisions have been deemed worthy of transmission to posterity.—*Albany Law Journal.*

HILARY TERM.—The Lord Chancellor will not receive the judges on Wednesday next, the first day of term. The courts will open at the usual hour.

LEGAL REDUCTION.—The Home Government is said to have approved of the reduction of one judgeship in original side of the High Court at Bombay.—*Civil Service Gazette.*

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

ROGERS—On Dec. 31, at 75, Hamilton-terrace, St. John's-wood, the wife of Benjamin Bickley Rogers, Esq., of Lincoln's-inn, barrister-at-law, of a son.

WOOD—On Dec. 29, at 5, St. Stephen's-square, Bayswater, the wife of Charles Wood, Esq., of Lincoln's-inn, barrister-at-law, of a son, stillborn.

MARRIAGES.

DEMPSTER—NEWMAN—On Dec. 22, at Westham, Sussex, George B. Dempster, solicitor, to Hannah, daughter of John Newman, of Eastbourne.

DEATHS.

BOURKE—On Dec. 26, at Carrowheele, county Mayo, Walter Bourke, Esq., Q.C., aged 67.

BRANDT—On Dec. 26, at 10, King's Bench-walk, Temple, William Brandt, Esq., barrister-at-law, in the 41st year of his age.

DAWES—On Jan. 3, at Tunbridge Wells, Thomas Dawes, Esq., late of Winchelsea, in his 98th year.

GIBSON—On Jan. 3, William Sidney Gibson, Esq., barrister-at-law, Registrar of H.M.'s District Court of Bankruptcy, Newcastle-on-Tyne.

HINCHLIFF—On Dec. 31, at Torquay, Edwin Hinchliff, solicitor, in his 31st year.

LONDON GAZETTES.

Professional Partnerships Dissolved.

TUESDAY, Jan. 3, 1871.

Bassett, Chas, & Octavius March, Gt James-st, Bedford-row, Solicitors. Dec 29.

Waller, Wm, & Wm Alex Waller, King-st, Cheapside, Attorneys and Solicitors. Dec 31.

Winding-up of Joint Stock Companies.

FRIDAY, Dec. 30, 1870.

UNLIMITED IN CHANCERY.

Nevada Freehold Properties Trust.—Vice-Chancellor Bacon has, by an order dated Dec 23, appointed Jas Ford, 53, Moorgate-street, official liquidator.

South Wales and Great Western Direct Railway Company.—Vice-Chancellor Bacon has, by an order dated Dec 21, ordered that the above company be wound up by the court. Ashurst & Co, Old Jewry, solicitors for the petitioner.

LIMITED IN CHANCERY.

Lones's Patent Steel Coated Iron Company (Limited).—Vice-Chancellor Bacon has, by an order dated Dec 21, ordered that the above company be wound up by the court. Newman & Co, Cornhill; agents for Shakespeare, Oldbury, solicitor for the petitioners.

Mersey and Weaver Company (Limited).—Vice-Chancellor Wickens has, by an order dated Dec 20, ordered that the above company be wound up by the court. Billson, Lpool, solicitor for the petitioners.

Ynscedwyn Iron Company (Limited).—The Master of the Rolls has, by an order dated Dec 10, ordered that the voluntary winding up of the above company be continued. Kimber & Ellis, Lombard-st, agents for Norton, Swansea, solicitor for the petitioner.

TUESDAY, Jan. 3, 1871.

LIMITED IN CHANCERY.

Laxey Neath Smelting Company (Limited).—Petition for winding up, presented Jan 3, directed to be heard before Vice-Chancellor Bacon on Jan 14. Chester & Urquhart, Staple-inn; agents for Frodsham & Nicholson, Lpool, solicitors for the petitioners.

Parcels Conveyance Company (Limited).—Vice-Chancellor Bacon has, by an order dated Dec 22, ordered that the voluntary winding up of the above company be continued, and appointed Jas Tunks, Stirling House, Bounds Green, Colney Hatch, and Joseph Simpson, Cowper's-court, Cornhill, the provisional official liquidators. Lawrance & Co, Old Jewry-chambers, solicitors for the petitioners.

Creditors under Estates in Chancery.

Last Day of Proof.

FRIDAY, Dec. 30, 1870.

Allender, Fredk, Lpool, Hatter. Jan 2. Allender v Allender, V.C. Stuart. Markby & Co, New-sq, Lincoln's-inn.

Day, Samuel, York-rd, Battersea. Licensed Victualler. Feb 1. Smith v Day, V.C. Stuart. Vallance & Vallance, Essex-st, Strand.

Teetal, Marion Henson, Brighton, Sussex. Jan 26. Hankin v Kilburn, V.C. Bacon. Wheeler, Victoria-st, Westminster.

Wright, Thos, Boston, Lincoln, Merchant, Jan 31. Baker v Wright, V.C. Malins. Scott, Coleman-st.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

FRIDAY, Dec. 30, 1870.

Banks, Anthony, Caton, Lancaster, Cattle Dealer. Feb 1. Sharp & Son.

Bonsall, Chas, Kingston-on-Thames, Surrey, Gent. April 1. Pamphillon, John-st, Adelphi.

Brown, Jane, Brighton, Sussex, Spinster. Jan 31. Willan, Hotham Brough.

Cawley, Wm, Stapley Hall, nr Nantwich, Farmer. Feb 13. Cawley, Tarporley.

Clark, John, East Heath, Berks, Gent. Feb 1. Cooke, Wokingham.

Fothergill, Anne, Kendal, Westmoreland, Widow. Jan 31. Harrison & Son, Kendal.

Harris, Eliz, Feering, Essex, Widow. Beaumont, Great Coggesha ll.

Hartley, Samuel, Buxton, Derby, Lodging-house Keeper. Jan 31. Gratton, Chesterfield.

Haward, Thos, Herne Bay, Kent, Butcher. Feb 1. Travis & Co, Throgmorton-st.

Hirst, Sarah, Crosland Moor, Huddersfield, York. Widow. March 1. Bottomley, Huddersfield.

Lawson, Fras, Lpool, Brewer. Jan 30. Duke & Goffey, Lpool.

Newberry, Wm Kenward, Liverpool-rd, Gent. Feb 14. Wordsworth & Co, Threadneedle-st.

Paisley, David, Stoke-upon-Trent, Stafford, Gent. Feb 8. Wards & Coopers, Newcastle-under-Lyme.

Parkin, Jas, Almondbury, York, Farmer. March 1. Bottomley, Huddersfield.

Raven, John, St Helen's, Cumberland, Farmer. Feb 2. McKelvie, Whitehaven.

Reed, Rev Jas Aloysius, Folkestone, Kent. Feb 14. Arnold, Gravesend.

Rudge, Geo, Rio de Janeiro, Brazil. April 28. Flux & Co, East India-avenue.

Sharland, Eliz, Tulse-hill, Brixton, Widow. Feb 10. Newton, Leighton Buzzard.

Teeson, Rev John, Winchester-st, Pimlico. Feb 16. Crowdy, Serjeant's-inn, Fleet-st.

Waterhouse, Abraham, Huddersfield, York, Innkeeper. March 31. Bottomley, Huddersfield.

Whittingham, Hy, Hanley, Stafford, Auctioneer. Jan 28. Challinor, Hanley.

Wood, Mary Ann, Prospect House, Dalston. Jan 27. Angell, Guildhall-yard.

TUESDAY, Jan. 3, 1871.

Atkin, Thos, Abbey-st, Bermondsey, Butcher. Jan 31. Townley & Gard, Gresham-bldgs, Basinghall-st.

Clark, Wm, Commercial-rd, Peckham, Licensed Victualler. Feb 11. Adams, Old-change.

Dooley, Wm, Tue Brook, nr Lpool, Gent. March 15. Houghton, Lpool.

Foden, Lea, Macclesfield, Chester, Timber Merchant. Feb 1. Killmister & Son, Macclesfield.

Gapper, Mary Ann, Crewkerne, Somerset, Spinster. Feb 1. Budge, Crewkerne.

Hughes, Thos, Brynllystyn, Flint, Farmer. Jan 20. Davies, Holywell.

Hutchinson, Jas, Broomhill, Lancaster, Esq. Feb 28. Cunliffe & Leaf, Manch.

Lang, Wm, Clifton, Bristol, Surgeon. Feb 20. Brittan & Sons, Bristol.

Norris, Wm, Brooklands, Chester, Gent. Feb 28. Norris & Wood, Manch.

Page, Mary, Ware, Hertford, Barge Carrier. Feb 4. Spence & Hawks, Hertford.

Pask, Susan, Ipswich, Suffolk, Widow. Feb 11. Daniel, Ipswich.

Schwartz, Rev August Ferdinand Carl, Strathmore-gardens, Kensington, D.D. Jan 31. Townley & Gard, Gresham-bldgs, Basinghall-st.

Senhouse, Mary, Derwent-bridge, Cumberland, Spinster. Feb 8. Waugh, Cockermouth.

Smith, Sidney, Ravenscourt-sq, Hammersmith, Gent. Feb 8. Smith, Furnival's-inn.

Thornton, Thos, Moorgate-st, Esq, March 25. Jones & Co, Tooley-st, Southwark.

Wilkinson, Joseph, Sunderland, Cumberland, Yeoman. Feb 8. Waugh, Cockermouth.

Bankrupts.

FRIDAY, Dec. 30, 1870.

Under the Bankruptcy Act, 1869.

Creditors must forward their proofs of debts to the Registrar.

To Surrender in London.

De Vecchi, Silvio Eugenio, & Domenico Navone, jun, Gt Winchester-st-bldgs, Merchants. Pet Dec 16. Spring-Rice. Jan 19 at 11.

To Surrender in the Country.

Adcock, Wm Thompson, Worcester, Stockbroker. Pet Dec 28. Crisp. Worcester, Jan 11 at 12.

Borrill, Caleb, Grainthorpe, Gt Grimsby, Lincoln, Tailor. Pet Dec 23. Daubney. Gt Grimsby, Jan 9 at 1.

Burgo, Robt Chas, Bristol, out of business. Pet Dec 28. Harley. Bristol, Jan 11 at 12.

Greenwood, John, Bradford, York, Wool Dealer. Pet Dec 23. Robinson. Bradford, Jan 10 at 9.

Harvey, Jas, jun, Clifton Wood, Bristol, Builder. Pet Dec 28. Harley. Bristol, Jan 13 at 12.

TUESDAY, Jan. 3, 1871.

Under the Bankruptcy Act, 1869.

Creditors must forward their proofs of debts to the Registrar.

To Surrender in London.

Stott, Isaac Leach, jun, Milton-st, Warehouseman. Pet Dec 8. Pepys. Jan 10 at 1.

Willson, Chas, Francis-st, Gower-st, Bit Maker's Manager. Pet Dec 31. Pepys. Jan 19 at 12.

To Surrender in the Country.

Barker, Ormerod, Todmorden, York, Cotton Spinner. Pet Dec 29. Hartley. Burnley, Jan 14 at 12.

Keast, Wm Penwarne, Liskeard, Corn wall, Auctioneer. Pet Dec 31. Pearce. East Stonehouse, Jan 14 at 11.

Timperley, Robt, Winton, Lancashire, Grocer. Pet Dec 29. Hulton. Salford, Jan 18 at 11.

Wake, Alfd Edwd Baker, Wellow, I of W, Cattle Dealer. Pet Dec 30. Blake. Newport, Jan 16 at .

BANKRUPTCIES ANNULLED.

FRIDAY, Dec. 30, 1870.

Thomas, Jas Tombs, Prisoner for Debt, Petworth. Dec 24.

TUESDAY, Jan. 3, 1871.

Eddell, Jas Skelton, Huddersfield, York, Hosier. Dec 31.
Williams, Hy, Tipton, Stafford, Fire Brick Manufacturer. Dec 30.

Liquidation by Arrangement.

FIRST MEETINGS OF CREDITORS.

FRIDAY, Dec. 30, 1870.

Ashcroft, Wm, Long-lane, Smithfield, out of business. Jan 16 at 3, at office of Storer & Co, Fountain-st, Manch.
Barker, Benj, Halifax, York, Grocer. Jan 11 at 3, at offices of Wavell & Co, George-st, Halifax.
Bateman, Jas, Sparkbrook, Warwick, Builder. Jan 18 at 11, at offices of Tyndall & Co, Waterloo-st, Birm.
Billings, John, Walkley, Sheffield, Brickmaking Contractor. Jan 12 at 1, at office of Machen, Bank-st, Sheffield.
Bolwell, Alfred, Bath, Somerset, Auctioneer. Jan 10 at 12, at office of Ricketts, Paragon, Bath.
Brend, Thos, Swansea, Glamorgan, Chemist. Jan 12 at 2, at office of Clifton, Wind-st, Swansea.
Brierley, John, Frodsham, Chester, Apothecary. Jan 4 at 11, at the Palatine Hotel, Hunt's-bank, Manch. Ashton, Frodsham.
Castleman, Chas, Westbourne-pk-villas, Bayswater, Timber Dealer. Jan 21 at 1, at Kennan's Hotel, Crown-ct, Cheapside. New, Basinghall-st.
Clare, Chas, Stourbridge, Worcester, Beerseller. Jan 14 at 10, at office of Prescott, High st, Stourbridge.
Cock, Thos, Truro, Cornwall, Grocer, Jan 11 at 2, at office of Trevens, Princes-st, Truro.
Cerke, Silas, Sevenoaks, Kent, Auctioneer. Jan 11 at 11, at offices of Holcroft & Knocker, Sevenoaks.
Dalton, Edwd Hy, & Edwd Hulse Willock, Windsor, Berks, Brewers. Jan 19 at 3, at office of Lawrance & Co, Old Jewry-chambers.
Daniel, John, Stone, Stafford, Milliner. Jan 12 at 11, at offices of Messrs. Tennant, Hanley.
Dodd, Wm Hartley, Llangollen, Denbigh, Draper. Jan 14 at 11, at office of Sherratt, Hope-st, Wrexham.
Draycott, John, White Post-lane, Hackney-wick, Pig Dealer. Jan 16 at 3, at offices of Lewis & Sons, Wilmington-sq, Clerkenwell.
Else, Fredk Edwd, Queen's-rd, Bayswater, Wine Merchant. Jan 11 at 2, at 145, Cheapside. Messrs. Gole, Lime-st.
Fownes, Gilbert, jun, Wimbledon, Surrey, Coal Merchant. Jan 10 at 2, at offices of Dixon & Letchworth, Bedford-row, Holborn.
Gallivan, Matthew, Cardiff, Glamorgan, Greengrocer. Jan 13 at 12, at office of Griffin, Quay-st, Cardiff.
Grainger, Joseph, South-ter, Falcon-rd, Battersea. Jan 12 at 2, at 32, Lupus-st, Pimlico. Condy, Battersea.
Green, Augustine Saml, Barrow-upon-Humber, Lincoln, Miller. Jan 11 at 12, at office of Ayre, Bowlalley-lane, Kingston-upon-Hull.
Hawkins, Abraham, Taunton St James, Somerset, Innkeeper. Jan 13 at 12, at offices of Trenchard & Walsh, Registry-p., Taunton.
erfoot, Wm, Gt Sankay, Lancaster, Farmer. Jan 12 at 11, at offices of Davies & Co, Horsemarket-st, Warrington.
Leake, Hy, Castle-st, Oxford-st, Gun Case Maker. Jan 17 at 2, at office of Apps, South-sq, Gray's-inn.
Levy, Alex, Finsbury-sq, Auctioneer. Jan 16 at 1, at offices of Johnstone & Co, Coleman-st-bldgs, Moorgate-st. Harris, Moorgate-st.
Mathew, Thos, High-st, Clapham, Linendraper. Jan 12 at 12, at the Guildhall Tavern, Gresham-st. Richards, Warwick-st, Regent-st.
Minahull, Fredk, Betchten, Chester, out of business. Jan 17 at 12, at the Brunswick Hotel, Piccadilly, Manch. Davies, Congleton.
Nicholson, Thos, Lpool, Draper. Jan 12 at 3, at office of Etty, Lord-st, Lpool.
Norman, Chas Lucas, Sheffield, York, Builder. Jan 12 at 3, at the Cutlers' Hall, Sheffield. Parker, Sheffield.
Palmer, John, East Ham, Essex, Barman. Jan 9 at 11, at office of Dobson, Chancery-chambers, Quality-ct, W.C.
Robbins, Edwin Arnould, & Hy Robbins, Slough, Bucks, Builders. Jan 13 at 11, at office of Barrett, Lancaster-st, High-st, Slough.
Seares, Wm Rowland, Gt Tower-st, Tea Merchant. Jan 10 at 4, at offices of Lewis & Co, Old Jewry.
Sparkes, Wm, Bradninch, Devon, Saddler. Jan 13 at 11, at 13, Bedford-circus, Exeter. Were.
Spong, Chas Wingrove, Hannah-cottages, Commercial-rd, Peckham, Comm Agent. Jan 19 at 3, at office of Brighten, Bishopsgate-st, Without.
Taylor, Geo, Bow-common-lane, Bromley New Town, Builder. Jan 16 at 3, at offices of Lewis & Sons, Wilmington-sq, Clerkenwell.
Thomson, Robt, Gateshead, Durham, Grocer. Jan 11 at 12, at office of Woolston, Hills-st, Gateshead.
Thresher, Thos Swinfen, & Thos Hy Thresher, King-st West, Hammersmith, Pawnbrokers. Jan 9 at 3, at offices of Foreman & Co, Gresham-st. Mason, Gresham-st.
Walker, Richd, Hambletar, Lancaster, Farmer. Jan 12 at 11, at offices of Turner & Son, Fox-st, Lpool.
Watkins, Richd Thos, Diglis, Worcester, Carpenter. Jan 13 at 1, at office of Clutterbuck, High-st, Worcester.
Wesson, John, jun, Nottingham, Lace Manufacturer. Jan 17 at 12, at office of Messrs. Thorpe, Thurland-st, Nottingham.
Wetherell, Wm, Stockton-on-Tees, Durham, Tailor. Jan 6 at 11.30, at office of Draper, Finkle-st, Stockton-on-Tees.
Whalley, Danl Hy, Birkenhead, Chester, Licensed Victualler. Jan 11 at 2, at office of Moore, Duncan-st, Birkenhead.
Whitehand, John, Deopham, Norfolk, Farmer. Jan 18 at 12, at office of Tillett, St Andrew's st, Norwich.
Wilson, Hy, Halifax, York, Builder. Jan 9 at 11, at the Sportsman's Inn, Swine Market, Halifax. Lancaster.

TUESDAY, Jan. 3, 1871.

Abraham, Joseph, & Joseph Thos Abraham, Devizes, Wilts, Grocers. Jan 17 at 1, at office of Randell, Exchange-pl, Devizes. Witley, Devizes.
Allday, Julius, & Edwd Allday, Birm, Butchers. Jan 18 at 11, at office of Walter, Waxman-row, St Mary's-sq, Birm.
Archer, Wm, Bradford, York, Cabinet Maker. Jan 17 at 4, at office of Messman, Bond-st, Bradford.
Bartlett, Fredk, Crediton, Devon, Draper. Jan 16 at 12, at offices of Williams & Co, Exchange, Bristol.
Boult, Francis, Chas John English, Thos Brandon, & Wm Hunter, Lpool, Shipowners. Jan 12 at 1, at offices of Banner & Son, North John-st, Lpool. Bateson & Co.
Brittain, Chas, Scarborough, York, Boot Dealer. Jan 18 at 12, at office of Simpson, Albion-st, Leeds.
Clark, Hy, Seaton-house, near Seaham, Durham, Agent. Jan 18 at 12, at offices of Messrs. Wright, High-st East, Sunderland.
Craik, Wm, Tweedmouth, Berwick-upon-Tweed, Mason. Jan 16 at 11, at office of Weatherhead, Castlegate, Berwick-upon-Tweed.
Demain, Joseph, Bradford, York, Cabinet Maker. Jan 16 at 3, at offices of Watson & Dickons, Market-st, Bradford.
Imond, Saml. Penarth, Glamorgan, Hotel Proprietor. Jan 14 at 12, at offices of Williams & Co, St Mary-st, Cardiff. Waldron.
Donbavand, Wm, jun, Sheffield, York, Weighing Machine Maker. Jan 16 at 12, at office of Mellor, Bank-st, Sheffield.
Dunville, Peter Chatband, Knutsford, Chester, Saddler. Jan 17 at 1, at the George Hotel, Knutsford, Chester. Duckworth, Manch.
Fardell, Thos, Trinity-sq, Tower-hill, out of business. Jan 19 at 2, at offices of Hilleary & Tunstall, Fenchurch-bldgs.
Farmery, Wm, Glentham, Lincoln, Publican. Jan 13 at 12, at office of Harrison, Bank-st, Lincoln.
Foster, Wm, Birm, Beer Retailer. Jan 16 at 12, at office of Grove, Bennett's-hill, Birm. Glover, Walsall.
Fulford, Emily, Uxbridge, Middx, Fancy Repository Keeper. Jan 25 at 12, at the British Coffee-house, Holborn. Jennings, Uxbridge.
Guy, John Hayward, Bury St Edmund's, Suffolk, Maltster. Jan 19 at 11, at offices of Salmon & Son, Guildhall-st, Bury St Edmund's.
Hampton, John, & Morton Norman, Lpool, Shipbrokers. Jan 17 at 3, at offices of Gibson & Bolland, South John-st, Lpool.
Hattersley, Noah Wm, Lockwood, near Huddersfield, York, Builder. Jan 16 at 11, at office of Clough, Market-st, Huddersfield.
Hopkins, Wm, Swansea, Glamorgan. Licensed Victualler. Jan 9 at 2, at office of Morris, Rutland-st, Swansea.
Horobin, John, Over Stonnal, Stafford, Market Gardener. Jan 18 at 12, at the Dolphin Inn, Bore-st, Lichfield. Sheldon.
Johnson, Geo, jun, Horbury, Wakefield, Worsted Dealer. Jan 18 at 2, at the Fleece Inn, Horbury. Stringer.
Lucas, Wm, & Albert Brown, Stockport, Chester, Hat Manufacturers. Jan 17 at 4, at office of Addleshaw, King-st, Manch.
Martin, John, Wrexham, Norfolk, Farmer. Jan 14 at 12, at offices of Emerson & Sparrow, Rampant Horse-st.
O'Neill, Ellen Mary, & Mary O'Neill, Lpool, Drapers. Jan 16 at 3, at office of Masters, North John-st, Lpool.
Pantlin, Robt, Lpool, Baker. Jan 16 at 2, at office of Procter, Old Castle-bldgs, Preeson's-row, Lpool. Peacock & Co, Lpool.
Parker, Wm, Brook, Chester, Builder. Jan 17 at 1, at offices of Bridgman & Co, Westminster-bldgs, Newgate-st.
Pattinson, Joseph Hodgson, Sunderland, Durham, Grocer. Jan 12 at 12, at offices of Sherwood & Co, John-st, Sunderland.
Pollard, Jas, Manch, Silver Plater. Jan 17 at 3, at offices of Smith & Boyer, Brazennose-st, Manch.
Reading, John Ebenezer, St John's-rd, Hoxton, Smith. Jan 16 at 2, at offices of Appleby & Co, Southampton-st, Bloomsbury.
Richard, Thos Fras, Chancery-lane, Gent. Jan 10 at 3, at offices of Ditchman, Margaret-st, Cavendish-sq.
Sciama, Levi, Manch, Merchant. Jan 23 at 8, at offices of Ryland, Essex-st, Manch.
Shere, John Ellis Bater, Edgware, Middx, Publican. Jan 9 at 12, at the Railway Inn, Edgeware. Snow, College-hill, Cannon-st.
Simpson, John, Upper Bedford-pl, Russell-sq, Gent. Jan 24 at 2, at the Mitre Hotel, High-st, Oxford. Bedford & Lacy, King's Bench-walk, Temple.
Smith, Samuel, Sheffield, York, Shoe Dealer. Jan 16 at 12, at offices of Edey, Change-alley, Sheffield. Webster.
Stonehouse, Jas Askew, Blackfriars-rd, Oilman. Jan 13 at 3, at offices of Bath & Co, King William-st.
Storey, Jas, Sheffield, York, Tailor. Jan 19 at 1, at offices of Smith & Hinde, Bank-st, Sheffield.
Thompson, John, Manch, Builder. Jan 23 at 2, at the Mitre Hotel, Manch. Farrar, Manch.
Ward, Geo, North Manton, Buckingham, Baker. Jan 10 at 2, at offices of Jolley, High-st, Leighton Buzzard.
Warren, Wm, Torre, Torquay, Devon, Coach Builder. Jan 16 at 12, at the Half Moon Hotel, Exeter. Floud, Exeter.